Legal notice of claim for a civil rights violation of due process and equal protection.

Davi Lynd

vs

Chief Judge Lockemy

Clerk of the Court Jenny Kitchens

Deputy Clerk Claire Allen

South Carolina Court of Appeals

This notice is as required under 1988 and the precedents under *Felder v. Casey.* This is an official claim of rights violations and must be processed as such.

The South Carolina District Courts, and the South Carolina Court of Appeals has embarked on a campaign to Avoid Lynd being reimbursed for the theft of property by the Isle Of Palms. This is and was an intentional act to violate Lynd's equal protection and due process rights under Federal Law.

After the theft by Isle of Palms Police Dept, the District and Appeals Courts under over 25 different South Carolina statutes were bound by the statute to apply the law,,, not reinterpret it, and issue an order of conversion and restitution. The statutes are very clear and DO NOT have a statute of limitations, theft/conversion under South Carolina law has NO statute of limitations,

and therefore cannot be dismissed on a basis of Statute of Limitations as Chief Judge Lockemy did.

Chief Judge Lockemy made this ruling after numerous, documented, ex-parte communications with isle of Palms counsel and its partner, and the Law Firm Clawson and Staubes. The ruling was intended to remove and protect the parties represented by Clawson and Staubes, and counsel Tim Domin whom had committed fraud and fraud on the court, while trying to cover up the acts of theft by Isle of Palms.

The acts are clear, concise, and indisputable. The orders by the District Court and Court of Appeals are in black and white and violate Lynd's due process and equal protection.

This is a clear and concise fraud upon the Court under the standards set by the S.C.O.T.U.S.

> ***In Hazel Atlas Glass v. Hartford-Empire Co. 322 U.S. 238, 240-246. 64 S.Ct. 997, 88 L.Ed. 1250 (1944) pg 12,20,21,32,33,34***. *"is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot be tolerated."* Because fraud on the court concerns the integrity of the judicial process itself, a judgment may be set aside for fraud on the court at any time. There is no time limit on any party or court. ***Serzysko v. chase Manhattan Bank 461 F2d 699,703 (2d Cir. 1972)***
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> ***Root Refining Co. v. Universal Oil Products Co. 169 F2d 514, 522 (3rd Cir. 1948)*** "when a controversy has been terminated by a judgment, its freedom from fraud may always be the subject of further judicial inquiry, and the general rule that courts do not set aside their judgments after the term at which they are rendered has no application."
>
> ***Valerio v. Boise Cascade Corp. 80 F.R.D. 626 640 n.10 (N.D.Cal 1978) 645 F2d 699,700 (9th cir. 1981)*** " there is no statute of limitations on Fraud on the court"

Bulloch v. United States 721 F2d 713,719 (10th Cir. 1983) "Rule 60 (b) does not impose a time limit on motions asserting fraud on the court" ***Wilkin v. Sunbeam Corp. 405 F2d 165, 166 (10th Cir. 1968)*** appellate court remanded matter for consideration on theory of fraud on court, for which there is no time limit."

There are over a dozen clear instances in just the C.O.A. record from ignoring certificate of service procedures, specific complaints on that, **refusal to process those complaints,** allowing paid counsel to run off with funds. Filling irregularities, intentional "misfiling's" by the clerk. Unsupported "generic" rule violations claimed by the clerks, all of these to avoid any other eyes seeing the records, the file, and the facts besides Chief Judge Lockemy.

This instance here which was the final straw, and secured the filing of a civil rights action and claim, due process and equal protection violations.

Lynd filed a motion to rehear en-banc, case number 2016-002024

it was sent USPS with tracking #

9505 5128 8578 8095 1740 07,

and paid a filing fee of $25.00 in the form of a postal money Order tracking #

24063470605. *(both verified on the U.S.P.S. website)*

The clerk Claire Allen refused acceptance of the filing fee, claiming the postal money order was deficient under SCACR. The letter does not specify a rule that was violated, and no rule is found to be violated. The letter then goes on **to "create" its own deficiency "clause"** in an attempt to project an implication that it is a clear and existing rule. WHEN IT IS NOT. And does not exist anywhere in the Rules, so it could not be a Rule violation. That is a fraud by the Clerk and a clear rights violation under the color of law, an color of authority.

In United States law, the term **color of law** denotes the "mere semblance of legal right", the "pretense or appearance of" right; hence, an action done under **color of law** adjusts (colors) the law to the circumstance, yet said apparently legal action contravenes the law. **Under color of authority** is a legal phrase used in the US **indicating that a person is claiming or implying the acts he or she is committing are related to and legitimized by his or her role as an agent of governmental power, especially if the acts are unlawful.** "Color of office" refers to an act usually committed by a public official under the appearance of authority but exceeds such authority. An affirmative act or omission, committed under color of office, is sometimes required to prove malfeasance in office.

Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, **as well as judges**, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

Filed Date Event Information
4/11/2018 Deficiency - Deficiency Letter Sent (motion fee)

It is clear the motion was timely filed and the fee paid, but returned on insufficient and non-existent grounds. Again a clear violation and a clear act to impede the appeal and Lynd's rights to restitution.

In a Recorded phone call of 4-30-18 8:38 CST, 9:38 EST, Clerk Jenny Kitchens claimed Lynd violated rule 240 of the SCACR. Miss kitchens went on to claim the money order in question violated *Rule 240 sec. d.* nowhere in that rule is a violation the money order would have incurred or caused. While Mrs. Kitchens harassed and impeded Lynd's calls to get some sort of explanation and resolution, she later claimed on tape that the Money Order was not negotiable and was somehow returned. The returned Money Order shows no endorsement, nor any attempts to negotiate it, It is another lie by the clerks which is clear as the Money order now becomes evidence. Mrs. Kitchens the dug herself deeper by claiming the rule *240 d* violation is due to the fact that ***"we do not have $25 in our bank account"*** this would be hilarious to the point of laughable if not for the seriousness of the fraud she was committing.

You cannot sign for and accept delivery of a postal money order *(guaranteed payment under the law)* then return by your own hand *(legal admission in the letter it was received and returned)* and then try and claim somehow the sender violated a rule because you failed to deposit it.

Ridiculous, but I am sure Chief Judge Lockemy while find a lame way to try and spin it.

Rule 240 is copied below with the included footnote. Nowhwere in that Rule is any form of requirement or any guideline as to how a money order or check for payment of a filing fee is to be made, signed, presented, or negotiated. Attached is the money order filed, the date it was received, 4-10-18, and the and the dates it was returned 4-11-18,*(not enough time to even had attempted negotiation)* and then received by Lynd 17 days later 4-28-18. The letter refusing acceptance of Lynd filing fee is declaring a 10 day response time. The C.O.A. Clerks know the time limit for snail mail from S.C. to Texas is approx. 2 weeks /14 days. There are repeated filings on this, and the clerks are well aware of the time delay, but still insist on placing Lynd in an intentional losing pattern with what results as harassment, by making false claims of violations, requiring response in 10 days, knowing the notice will not be received then, and then "technically" dismissing appeals and motions.

RULE 240
MOTIONS AND PETITIONS GENERALLY

(a) Applicability. This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, motions to remand or dismiss and petitions for hearing *en banc*. Where Rules 241 through 246 provide different or additional requirements or procedures, those requirements or procedures shall apply.

(b) Stay of Time Limits. Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

(c) Form and Content of Motions and Petitions. All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

(d) Filing of Motions and Petitions. An original and six (6) copies of the motion shall be filed with the clerk of the appellate court, and a copy shall be served upon each party. The copies filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court.[1] This filing fee shall not be required for motions or petitions in criminal appeals, petitions for writs of certiorari under Rules 242 and 243, certified questions under Rule 244, petitions to invoke the original jurisdiction of the Supreme Court under Rule 245, or motions or petitions filed by the State of South Carolina or its departments or agencies. In extraordinary cases, the appellate court may relieve a party from paying the filing fee.

(e) Return to Motion. Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return; provided, however, a return to a petition or motion for rehearing under Rule 221 need not be filed unless requested by the court. The court may in its discretion enlarge or limit the time for filing the return. The provisions of Rule 240(c) shall apply to a return. Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.

(f) Reply. The moving party shall have five (5) days from the date of service of a return to file an original and six (6) copies of a reply with the clerk and serve on all parties a copy of the reply. The provisions of Rule 240(c) apply to a reply.

(g) Failure to Comply. Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.

(h) Hearing. Unless otherwise ordered by the court, motions or petitions shall be decided without oral argument.

(i) Rehearing. The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.

(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court, an individual judge or justice may grant or deny any motion or petition on behalf of the court. Any review of an order issued by an individual judge or justice shall be by petition for rehearing.

Last amended by Order dated January 29, 2009, effective April 29, 2009, by order of the same date.

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[1] By order dated October 2, 1985, the filing fee for motions and petitions was set at twenty-five ($25.00) dollars.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 11, 2018

David Scot Lynd
2605 Rustown Dr.
Mesquite TX 75150

Re: David Scot Lynd v. Dawn Caldwell
Appellate Case No. 2016-002024

Dear Mr. Lynd:

Upon reviewing your petition for rehearing and rehearing en banc, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your petition may not be considered:

- The money order provided with required filing fee of $25.00 has not been completely filled out and is not accepted. We are returning it to you.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: James Jordan Johnson, Esquire
Timothy Alan Domin, Esquire
Christopher Thomas Dorsel, Esquire
David Leon Morrison, Esquire
Sandra J. Senn, Esquire

It is clear in this instance this is nothing more than away to harass Lynd, under the color of authority, the motion was filed, all the rules followed, time limits followed, filing fees paid. But in a need to protect SLED and Isle of Palms from liability, the **clerks CREATED** a rule on their own, and tried to fraudulently apply it as a real rule.

Same as the acts Chief Judge Lockemy, ridiculous ruling the motion is based on, denial of having to face the clear and obvious facts proven against the State of South Carolina, and the Police dept. of Isle of Palms, this is clear and blatant harassment to avoid facing to accept the fact that under the statute and S.C. supreme Court precedents he was required to follow the statute and apply the law.

David Lynd hereby declares the parties named above have violated his equal protection rights under the law, have violated his due process rights under the law, have committed fraud upon the court, and attacked Lynd and his case and appeal under the color of law. There is no qualified immunity under these actions for this conduct, in violation of title18 sec 242, title 42 sec 1983, a state Bivens action, and any and all other violations yet unnamed.

Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States

Section 1983 is . . the section of title 42 of the U.S. Code that makes a person liable for depriving another of any rights, privileges, or immunities secured by the U.S. Constitution and laws while acting under color of any statute, ordinance, regulation, custom, or usage of a state

The language of the Fourteenth Amendment requires the provision of due process when an interest in one's "life, liberty **or property" is threatened**

Section 1983 creates a species of liability in favor of persons deprived of their federal civil rights by those wielding state authority. As we have repeatedly emphasized, "the central objective of the Reconstruction-Era civil rights statutes . . . is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Burnett* v. *Grattan*, 468 U. S. 42, 55 (1984). Thus, § 1983 provides "a uniquely federal remedy against incursions . . . upon rights secured by the Constitution and laws of the Nation," *Mitchum* v. *Foster*, 407 U. S. 225, 239 (1972), and is to be accorded "a sweep as broad as its language." *United States* v. *Price*, 383 U. S. 787, 801 (1966).

David Scot Lynd

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The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
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V. Cl

CL

cc: James Jordan Johnson, Esquir
Timothy Alan Domin, Esqu
Christopher Thomas Dors
David Leon Morrison, E
Sandra J. Senn, Esquire

UNITED STATES POSTAL SERVICE®

POSTAL MONEY ORDER

Serial Number: 24063470605

Year, Month, Day: 2018-04-05

Post Office: 75056

U.S. Dollars and Cents: $25.00

Twenty Five Dollars and 00/100 **********

Clerk: 06

Pay to: Clerk of the Court

Address:

From:

Address:

Memo: David Lynd #2016-002024

SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

24063470605

MAXIMUM VALUE ONE THOUSAND DOLLARS

ENDORSEMENT SIGNATURE

WARNING-CASHIER
REQUIRED POSITIVE IDENTIFICATION
HOLD TO LIGHT AND CHECK FOR
BENJAMIN FRANKLIN WATERMARK AND SECURITY THREAD.
NEGOTIABLE ONLY IN THE U.S. AND POSSESSION

ACH
Endorsement
or
Non-Negotiable
Void