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Court of Appeals
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5th Court of Appeals
FILED: 02/06/2019
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Lisa Matz, Clerk

IN THE

COURT OF APPEALS

FIFTH DISTRICT OF TEXAS AT DALLAS

CAUSE NO. 05-18-00567-CV

DARLENE C. BALISTRERI-AMRHEIN, APPELLANT

VS.

ATTORNEY LENNIE BOLLINGER, ET AL, APPELLEES

Appeal County Court at Law # 6, # 5, # 2, # 366, # 380, Justice Court Precinct 1, Cause No. CC 006-02654-2017, Cause No. 005-02654-2017, Cause No. 002-02654-2017, Cause No. 002-02663-2017, Justice Court Precinct 1 No. 01-SC-16-00165. Court # 380 (unassigned)

Collin County, Texas Lower Courts

APPELLANT'S AMENDED BRIEF & AMENDED APPENDIX (#5)

Darlene C. Balistreri-Amrhein, Appellant, Pro Se,

112 Winsley Circle

McKinney, Texas 75071

Telephone – None

ORAL ARGUMENT REQUESTED WITH ACCOMMODATIONS

#5

COURT RECORD REFERENCES ARGUMENT IN 8 PACKETS

(Packet # 1 Court Record References) –CR, pgs. 1 – 19 itemized, costs & events;

2) Plaintiff's Original petition & Request for Discovery- CR pgs. 20 – 35;

3) Plaintiff's Motion to proceed in forma pauperis - CR pgs. 36 – 41;

4) Approved "indigent status" - CR pgs. 42;

5) Service of process by constable – CR pgs. 43-50;

6) Defendants Lennie Bollinger, et al Answers suit – CR pgs, 51 – 64;

7) Plaintiff's Motion For Leave To File Supplement Petition CR pgs. 65 – 69;

8) Plaintiff's Supplement Pleadings -CR pgs, 70 – 133 Exhibits A, B;

9) Plaintiff's Motion t. Recuse Judge Walker – CR, pgs, 134 – 139 Order transfer;

10) Defendants Motion to Dismiss & Rule 91a – CR, pgs. 140 – 158;

11) Plaintiff's Specific Facts Dismiss Rule 91 – CR. pgs. 159- 268 Exhibits, etc.; c

(Packet # 2 Court Record References.) Legal Ethics Safekeeping Property, etc.;

2) CR. pgs. 269- 383; Notice of hearing & Hospitalized, CR pgs. 384 – 385;

3) Plaintiff's Motion for Continuance CR. pgs. 386 -390;

4) Defendants' Attorneys First Amended Answer & Response, CR. pgs. 391- 408;

5) Plaintiff's Notice To Court & Attorney Stay Lawsuit- CR pgs, 409=422;

6) Defendants Response Objections to Stay & Continue Lawsuit-CR pgs. 423-428;

7) Judge Wilson denies ADA, Stay, Hearing Rule 91a "Orders" –CR pgs. 429-429;

8) Affidavit Attorney / Judge Wilson – CR pgs. 430- 433 Exhibits, Costs to 442;

9) New Supplements-CR. pgs. 452 –484 (Dad, Schroeder mug photo, arrest, etc.;

(Packet # 3 Court Record References.) Plaintiff Waiving Client – Attorney . Privilege, Photo Damages, etc.– CR. pgs. 485 – 660;

2) Defendants' Attorneys response to Motion To Dismiss – CR pgs, 661- 678;

3) Plaintiff Second Motion To Stay & Continue Lawsuit- CR pgs. 679 – 687;

4) Plaintiff Response to Jan. 30, 2018 Order CR. pgs. 688 – 739;

5) Defendant Motion To Determine To Be " Vexatious Litigant & Security With Security – CR pgs. 740-784 – No Attached 5 Adverse Orders in 7 years, etc.;

(Packet # 4 Court Record Reference.) Exhibits A-2 -E-1 - CR pgs. 785- 1000;

(Packet # 5 Court Record Reference.) Exhibits E-2, G-2 – Tampered With Deposition, Witness, Court Reporter, Records, Costs to CR pgs. 1001- 1127;

2) Motion to Recuse Judge Wilson & Threats To Settle -CR. pgs. 1128 – 1156;

3) Threat Offer To Settle Lawsuit – CR. pg. 1134- 1134;

4) Order to Deny Recusal- CR. pg, 1157;

5) Plaintiff Notice , Objections & Illegal Activities – CR pgs 1158 -1184;

6) Plaintiff's First Amended Pleadings & 15 Notices (Crimes) - CR pgs 1185 – (1235 & 1236 blurred unreadable) & crimes to 1260;

(Packet # 6 Court Record Reference.) Order granting Rule 91a & Motion to Dismiss With Prejudice CR pgs. 1261 – 1262 Hearing / Hospitalized, Exhibits & Some Exhibit F (blurred & missing from Court Record to 1284;

2) Judge Wilson recuses self, report to U.S. Department of Justice CR pgs, 1285;

3) First Amend Motion Order "Vexatious Litigant" Hearing – CR. pg. 1286- 1287;

4) Judge Murphy transfer lawsuit to Judge Bender disqualified =- CR pg. 1288;

5) Plaintiff Important Information – CR. pgs. 1289 – 1427, & Exhibits;

6) Judge Mary Murphy Conditions of Assignment & Stay – CR pgs. 1428- 1429;

7) Plaintiff's Notice & Objections of Judge Bender Transfer, Response by Bollinger's Attorneys – CR, pgs. 1430-1466;

8) Plaintiff's Updated Medical Information – CR. pgs 1467-1481;

(Packet # 7 Court Record Reference.) Defendant Response for hearing & Exhibits Comingle lawsuits with Prosperity Bank, et al - CR. pgs. 1482 – 1520;

2) Defendants to Plaintiff Response on Vexatious litigant & Security & use of Prosperity Bank, et al Federal Lawsuit in "conspiracy" & tampered with Deposition Court Records as invalid & past 7 years as 2009 to prejudice & discredit & still pending & active conspiracy between federal & Texas Courts – to rigged, Plaintiff, silence lawsuit & prevent no redress for any suits & denied

freedom of speech & redress for all damages, loss of property & no due process - CR, pgs. 1521- 1600 - 1899;

(Packet # 8 Court Record Reference.) Certificate of Service falsified claims filed in lawsuit, CR pg, 1900 signed by Carrie Johnson Phaneuf as many times;

2) Threats to settle lawsuit as refused, CR, pgs. 1901- 1902;

3) Plaintiff's Objections & Responses to Plaintiff Tertiary (Third Motion To Recuse in this case an incorrect Assigned disqualified trespasser with no jurisdiction & Exhibits - CR pgs. 1903 – 1932;

4) Judge Wheless Order denied Recusal of Judge Bender for his misconduct – CR pgs 1933;

5) Judge Bender Order declaring Darlene C. Amrhein "vexatious litigant," requiring Security & issuing a prefiling Order – CR. pgs. 1934 – 1935;

6) Letter from CME on Order Judge Bender Order declaring Darlene C. Amrhein "vexatious litigant," requiring Security & issuing a prefiling Order-CR 1936-1938;

7) "Conspiracy" with Federal Court & Texas Court, Orders – CR pgs. 1939-1959 found in Judge Bender Court file for their retaliations against Amrhein lawsuits;

8) Plaintiff Objections to Judge Bender for "good cause" – CR pgs. 1960 -2019;

9) Amended Order On Motion To Recuse Judge Bender- CR. pgs. 2020;

10) Letter on failed bond to dismiss lawsuit by Bollinger Attorney with prejudice – CR pgs. 2021- 2024;

11) Plaintiff Darlene C. Balistreri-Amrhein Sworn Affidavit – CR pgs. 2025-2052;

12) Plaintiff's Motion to Charge Sanctions , Reverse false Vexatious Litigant Refuse Dismissal of lawsuit, Service of Process to All Defendants For "Good Cause' Reasons & Medical Stay Objections- CR pgs. 2053 -2081;

13) Judge Bender Order Dismissal With Prejudice Prohibiting New Litigation by Plaintiff Without Judicial Approval – CR pg. 2082 (back dated);

14) Filed for Service of Process to all Defendants mailed May 11, 2018, File stamped May 15, 2018 & called clerk to not do this work,-CR pgs. 2083- 2089;

15) Plaintiff's Notice of Appeal & Docket Statement – CR. pgs. 2090- 2109;

16) Plaintiff's Request Finding of Fact & Conclusion of Law May 14, 2018 My 14,

2018, required.- CR. 2110 –2142 (Void Judgments & CPRC Chapter 11);

17) Danyelle Turner filed Notice of Appeal May 14, 2018 wrong date – CR pgs. 2143 – 2144;

18) Response by Defendants' Attorneys to Finding of fact & Conclusion of law – CR pgs. 2145 – 2147;

19) Communications with Court of Appeals – CR pgs. 2148=2151;

20) Collin County Court letter shows date of Court of Appeal to grant more time for Court Record By Danyelle Turner extension on Court Record for manipulation with no answers for finding of fact & Conclusion of Law – CR pgs. 2152;

21) Court Record Submitted – CR. pg. 2153;

22) Court Record Payment by In forma Pauperis approved by Collin County Court- CR 2154; (See Collin County Court Approval Pg. 42 in same lawsuit when filed & then refused by trespasser Judge Bender after filed Appeal to keep out of Court Record with no notice to Plaintiff / Appellant as not turned over to Court of Appeals into this Court Record in retaliation by criminal, corrupt, trespasser Judge Bender with no authority, treason against U.S. Constitution & Texas Constitution

23) Sensitive Data Court Records sealed, were not done – CR pgs. 2155 -2157; Known no payment as approved In Forma Pauperis in case, so false statement to Court of Appeals Court- CR pg. 2158 by Court Record Keeper, Danyelle Turner to mislead Court to blame Plaintiff for delays to tamper with Court Record in Appeal & known by Stacy Kemp;

24) Plaintiff files Response & Objections to Defendants Objection to finding of fact & Conclusion of Law - CR pgs. 2159 – 2191;

25) Court of Appeals communications – CR pgs. 2192-2195; Writ of Mandamus Memorandum Opinion - CR pgs. 2196 – 2197 – 2200;

26) Court of Appeals list & proof of some conspiracy parties. Judge Mazzant (federal) Courts & Cases missing in Judge Paul Raleeh Court, Judge Barnett Walker, First Regional Administrative Judge Mary Murphy, Prosperity Bank, et al are missing from list by Ms. Matz – CR pgs. 2198- 2199- 2201 – 2202;

27) Jennifer K. Corley Contest of Court Reporter – CR pg. 2203; Missing Court Order – CR. pg. 2204; Clerks Certificate for Appeal by Danyelle Turner & Stacy Kemp missing Court Records in all Courts- CR pg. 2205;

#5

(5)

EXHIBIT E-2

Neutral
As of: February 7, 2018 3:39 PM Z

Amrhein v. La Madeleine, Inc.

Court of Appeals of Texas, Sixth District, Texarkana

March 26, 2013, Decided

Appellate Case Number: 06-12-00107-CV

Reporter
2013 Tex. App. LEXIS 3765 *

Darlene C. ***Amrhein*** v. La Madeleine, Inc.

Notice: DECISION WITHOUT PUBLISHED OPINION

Subsequent History: Rehearing overruled by *Amrhein v. La Madeleine, Inc., 2013 Tex. App. LEXIS 4882 (Tex. App. Texarkana, Apr. 16, 2013)*

Prior History: **[*1]** Trial Court Case Number: CC-96-10227-E.

Amrhein v. La Madeleine, Inc., 2013 Tex. App. LEXIS 2191 (Tex. App. Texarkana, Mar. 6, 2013)

Counsel: ***Darlene*** C. ***Amrhein***, McKinney, TX.

Jerry Fazio, Owen & Fazio, PC, Dallas, TX.

Opinion

The Court entered its order this date in the referenced proceeding whereby Pro Se Appellant's Motion for Rehearing was **OVERRULED**.

End of Document

EXHIBIT E-3

Neutral
As of: February 7, 2018 3:40 PM Z

Amrhein v. La Madeleine, Inc.

Court of Appeals of Texas, Sixth District, Texarkana

April 16, 2013, Decided

Appellate Case Number: 06-12-00107-CV

Reporter
2013 Tex. App. LEXIS 4882 *; 2013 WL 1632111

Darlene C. ***Amrhein*** v. La Madeleine, Inc.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: **[*1]** Trial Court Case Number: CC-96-10227-E.

Amrhein v. La Madeleine, Inc., 2013 Tex. App. LEXIS 3765 (Tex. App. Texarkana, Mar. 26, 2013)

Counsel: ***Darlene*** C. ***Amrhein***, McKinney, TX.

Jerry Fazio, Owen & Fazio, PC, Dallas, TX.

Opinion

The Court entered its order this date in the referenced proceeding whereby Pro Se Appellant's Further Motion for Rehearing as Previously Being Overruled and Timely Filed was **OVERRULED**.

End of Document

EXHIBIT E-4

Neutral
As of: February 7, 2018 3:40 PM Z

Amrhein v. La Madeleine, Inc.

Court of Appeals of Texas, Sixth District, Texarkana

April 30, 2013, Decided

Appellate Case Number: 06-12-00107-CV

Reporter
2013 Tex. App. LEXIS 5367 *

Darlene C. ***Amrhein*** v. La Madeleine, Inc.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: [*1] Trial Court Case Number: CC-96-10227-E.

Amrhein v. La Madeleine, Inc., 2013 Tex. App. LEXIS 2191 (Tex. App. Texarkana, Mar. 6, 2013)

Counsel: ***Darlene*** C. ***Amrhein***, McKinney, TX.

Jerry Fazio, Owen & Fazio, PC, Dallas, TX.

Judges: CHIEF JUSTICE, JOSH R. MORRISS, III.
JUSTICES, JACK CARTER, BAILEY C. MOSELEY.

Opinion

The Court entered its order this date in the referenced proceeding whereby Pro Se Appellant's Motion for Reconsideration En Banc was **OVERRULED**.

End of Document

EXHIBIT E-5

Neutral
As of: February 7, 2018 3:41 PM Z

Amrhein v. La Madeleine, Inc.

Supreme Court of Texas

February 7, 2014, Order Pronounced

13-0374

Reporter
2014 Tex. LEXIS 122 *

DARLENE C. ***AMRHEIN*** v. LA MADELEINE, INC.

Notice: DECISION WITHOUT PUBLISHED OPINION

Subsequent History: Motion for rehearing on petition for review denied by *Amrhein v. La Madeleine, Inc., 2014 Tex. LEXIS 281 (Tex., Apr. 4, 2014)*

Prior History: **[*1]** From Dallas County; 6th Court of Appeals District (*06-12-00107-CV, S.W.3d , 2013 Tex. App. LEXIS 2191, 03-06-13*).

Amrhein v. La Madeleine, Inc., 2013 Tex. App. LEXIS 2191 (Tex. App. Texarkana, Mar. 6, 2013)

Opinion

PETITION FOR REVIEW DENIED.

End of Document

EXHIBIT E-6

Neutral
As of: February 7, 2018 3:42 PM Z

Amrhein v. La Madeleine, Inc.

Supreme Court of Texas

April 4, 2014, Order Pronounced

13-0374

Reporter
2014 Tex. LEXIS 281 *

DARLENE C. ***AMRHEIN*** v. LA MADELEINE, INC.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: **[*1]** From Dallas County; 6th Court of Appeals District (*06-12-00107-CV, SW3d , 2013 Tex. App. LEXIS 2191, 03-06-13*).

***Amrhein** v. La Madeleine, Inc., 2014 Tex. LEXIS 122 (Tex., Feb. 7, 2014)*

Opinion

MOTION FOR REHEARING OF PETITION FOR REVIEW DENIED.

End of Document

EXHIBIT F-1

Positive
As of: February 7, 2018 3:54 PM Z

Amrhein v. Riechert

United States District Court for the Northern District of Texas, Dallas Division

February 1, 2013, Decided; February 1, 2013, Filed

3:12-CV-03707-G-BK

Reporter
2013 U.S. Dist. LEXIS 40343 *; 2013 WL 1155473

DARLENE C. AMRHEIN and ANTHONY J. BALISTRERI, Plaintiffs, v. JERRY RIECHERT, et al., Defendants.

Subsequent History: Magistrate's recommendation at *Amrhein v. Riechert, 2013 U.S. Dist. LEXIS 40333 (N.D. Tex., Feb. 15, 2013)*

Adopted by, Motion granted by, Dismissed by, in part *Amrhein v. Riechert, 2013 U.S. Dist. LEXIS 39228 (N.D. Tex., Mar. 21, 2013)*

Prior History: *Balistreri v. Remax Realty, 2011 Tex. App. LEXIS 333 (Tex. App. Dallas, Jan. 19, 2011)*

Core Terms

motion to dismiss, immunity, entity, dismissal with prejudice, state court, Attorneys', allegations, undersigned, recommends, parties, statute of limitations, cause of action, state law claim, district court, leave to amend, law firm, appraisal, lawsuit, Appeals, fail to state a claim, malpractice, conspiracy, injunction, violations, frivolous, sanctions, courts, rights, amend, district attorney

Counsel: **[*1]** Darlene C Amrhein, Plaintiff, Pro se, McKinney, TX.

Anthony J Balistreri, Plaintiff, Pro se, McKinney, TX.

For Jerry Riechert, Lori Riechert, Barry Fanning, Attorney, Fanning Harper & Martinson PC, Defendants: Barry H Fanning, LEAD ATTORNEY, Fanning Harper Martinson Brandt & Kutchin PC, Dallas, TX; Dean Foster, Fanning Harper Martinson Brandt & Kutchin, Dallas, TX.

For Re Max North Central Realty, Sally Darnall, Re Max agent, Lauren Palmer, (Re Max), Kelly Calkins, (Re Max), Bill J Williams, (Re Max), J Kent Newsom, Attorney, Newsom, Terry, Newsom PC, Defendants: J Kent Newsom, LEAD ATTORNEY, Newsom Terry & Newsom, Dallas, TX.

For Republic Title of Texas, First American Title Insurance Company, Rick Hightower, Attorney, Bigger, Beasley, Earl, Hightower PC, Defendants: Rick W Hightower, LEAD ATTORNEY, Beasley Hightower & Hartmann PC, Dallas, TX.

For AHI, (Aaron's Home Inspection), Aaron D Miller, Owner/Inspector (Claims administratively closed per [51] Order), Carl D Adams, Attorney, Defendants: Carl David Adams, LEAD ATTORNEY, The Law Offices of Carl D Adams, Dallas, TX.

For Stonebridge Ranch Homeowners Assoc, RTI/CMA Management, Dawn Holiday, Attorney, Roberts, Markel, Weinberg PC, Defendants: **[*2]** Gregg S Weinberg, LEAD ATTORNEY, Roberts Markel Weinberg P.C., Houston, TX.

For Newland Communities, Richard Abernathy, Attorney, Abernathy, Roeder, Boyd & Joplin, Defendants: Ross Q Wells, LEAD ATTORNEY, Abernathy Roeder Boyd & Joplin PC, McKinney, TX; Richard M Abernathy, Abernathy Roeder Boyd & Joplin, McKinney, TX.

For Thomas Murphy, Murphy Home Group, James Rudnicki, Attorney, Bush, Rudnicki & Shelton PC, Defendants: Carl J Wilkerson, The Bush Firm PC, Arlington, TX.

For Court of Appeals Fifth District of Texas at Dallas, State of Texas, Texas Real Estate Commission, Texas Judicial Commission, Texas Department of Insurance, Commissioner Eleanor Kitzman, Texas Department of Insurance, Governor Rick Perry, Greg Abbott, Texas Attorney General, Hope Andrade, Secretary of State, Defendants: Michael James Patterson, LEAD ATTORNEY, Office of the Attorney General, Austin, TX.

For City of McKinney/City Counsel, Defendant: Thomas P Brandt, LEAD ATTORNEY, Joshua A Skinner, Fanning Harper Martinson Brandt & Kutchin PC, Dallas, TX.

For Collin County Texas, Collin County Administrative Court, Andrea Stoh Thompson, Collin County District Clerk, Collin County District Attorneys Office, Defendants: **[*3]** Robert J Davis, LEAD ATTORNEY, Matthews Stein Shiels Pearce Knott Eden & Davis, Crosspoint Atrium, Dallas, TX.

For Judge John Roach, 296th Court, Judge Chris Oldner,

416th Court, Judge Richard D Davis, Judge John Ovard, Judge Jill Willis, 429th Court, Judge Richard Mays, Defendants: David A Harris, LEAD ATTORNEY, Attorney General of Texas, Austin, TX.

For Linda Risinger, Attorney, Law Office of Linda Risinger, Defendants: Bruce A Campbell, LEAD ATTORNEY, Campbell & Chadwick, PC, Dallas, TX.

For State Bar of Texas, Defendant: Susan Morgan Farris, LEAD ATTORNEY, State Bar of Texas, Dallas, TX.

For Law Firm of Carl D Adams, Defendant: Carl David Adams, LEAD ATTORNEY, The Law Offices of Carl D Adams, Dallas, TX.

For Collin County Central Appraisal District, Defendant: Lewis L Isaacks, LEAD ATTORNEY, Gay McCall Isaacks Gordon & Roberts PC, Plano, TX; Jennifer T Pettit, Gay McCall Isaacks Gordon & Roberts - Plano, Plano, TX; Joshua A Skinner, Thomas P Brandt, Fanning Harper Martinson Brandt & Kutchin PC, Dallas, TX.

Judges: RENÉE HARRIS TOLIVER, UNITED STATES MAGISTRATE JUDGE.

Opinion by: RENÉE HARRIS TOLIVER

Opinion

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

This cause was referred to the undersigned for pretrial management. **[*4]** The case is now before the Court for a recommendation on Defendants' various motions to dismiss (Docs. 6, 7, 9, 11, 12, 13, 14, 15, 17, 19, 20, 23, 24, 25, 27, 28), Defendant Collin County's *Motion to Transfer Venue* (Doc. 18), and Plaintiffs' *Motion for Alternative Service* (Doc. 10) and *Motion for Leave to Amend Plaintiffs' Complaint* (Doc. 34). For the reasons that follow, the Court recommends that Defendants' motions to dismiss be **GRANTED**, Defendant Collin County Appraisal District's additional *Motion to Dismiss* (Doc. 14) be **DENIED AS MOOT**, Defendant Collin County's *Motion to Transfer Venue* be **DENIED AS MOOT**, and Plaintiffs' motions be **DENIED**. Several Defendants also have moved for sanctions against Plaintiffs. (Docs. 9, 11-12, 19, 23-25). The undersigned recommends that the Court enter a pre-filing injunction against Ms. Amrhein to be applied in all district courts of the United States. The injunction should specify that Ms. Amrhein will not be permitted to file any new civil action in any United States district court unless she first files a motion requesting leave of court to do so and attaches thereto a copy of her proposed complaint and a copy of this Court's order imposing the **[*5]** injunction.

A. Background

In September 2012, the *pro se* Plaintiffs sued 59 defendants for (1) violating *42 U.S.C. § 1983*; (2) discriminating against Plaintiffs based on their age and disabilities; and (3) violating various provisions of the Texas Constitution. [1] (Doc. 3 at 3-4, 18, 58, 71). Plaintiffs also raised state law claims, such as fraud and negligence, against several defendants. *Id.* at 26-40, 54-58. The lawsuit stems from a May 2007 real estate transaction during which the Plaintiffs, who are father and daughter, purchased a house from Defendants Jerry and Lori Riechert. *Id.* at 20, 26-30. Unhappy with their purchase due to purported defects with the home, Plaintiffs have sued the Riecherts, as well as various other parties involved either directly or tangentially in the transaction. Those Defendants include (1) the homeowners' association, community management company, and home developer (Stonebridge Ranch Homeowners Association, RTI/CMA Management Company, and Newland Communities); (2) the realty company and realtors (Remax North Central, Sally Darnall, Lauren Palmer, Kelly Calkins, and Bill Williams); (3) the home inspector (AHI and Aaron D. Miller); two title insurance companies **[*6]** (Republic Title of Texas and First American Title Insurance Company); and the home builder (Thomas Murphy and Murphy Home Group). *Id.* at 8-9, 20, 23-40.

Plaintiffs also have sued numerous Texas state court judges, courts, the Collin County District Clerk, the City of McKinney and City Counsel, the State of Texas, the Collin County District Attorneys' Office, the Collin County Central Appraisal District, the Texas Real Estate Commission, the Texas Judicial Commission, the Texas Department of Insurance and one of its commissioners, the entire Texas state legislature, the Supreme Court of Texas, Governor Rick Perry, the Texas Attorney General, Texas Secretary of State Hope Andrade, and sundry private counsel, alleging that all were involved in the real estate transaction at issue. *Id.* at 9-16, 22-23, 41-68. Upon review of Plaintiffs' complaint, however, it is apparent that these latter Defendants are being sued for various actions they are alleged to have taken in a number of state court lawsuits **[*7]** that Plaintiffs filed subsequent to their purchase of the home. Defendants have

[1] Subject matter jurisdiction is grounded on Plaintiffs' presentation of federal questions. Diversity jurisdiction does not exist because Plaintiffs and several of the Defendants are Texas residents.

now moved for dismissal of Plaintiffs' complaint. [2] (Docs. 6, 7, 9, 11-15, 17, 19, 20, 23-25, 27, 28).

On December 11, 2012, the undersigned directed Plaintiffs to separately respond to each of the Defendants' motions. (Doc. 30). Despite this explicit instruction, however, Plaintiffs have instead chosen to file a single 190-page response containing rambling and redundant arguments and verbatim recitations of statute sections. (Doc. 35). Nevertheless, the Court has thoroughly considered and liberally construed Plaintiffs' filing, as well as an "objection" they filed in response to one of the dismissal motions. (Doc. 8); *Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)* (holding that *pro se* litigants' pleadings must be liberally construed). Plaintiffs also have filed a separate motion seeking leave to amend their complaint. (Doc. 34). The proposed amended complaint, containing 52 counts, **[*8]** appears to have been incorporated into their response to the motions to dismiss. (Doc. 35-1 at 20-100; Doc. 35-2 at 1-11). While this does not comport with the requirements of N.D. Texas Local Rule 15.1, the undersigned nevertheless has reviewed the proposed amended complaint in considering whether leave to amend should be granted.

B.Applicable Law

Generally, if it appears from the face of the complaint that a federal claim is without merit, the court should dismiss for failure to state a claim, and not on jurisdictional grounds. *Bell v. Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 90 L. Ed. 939 (1946)*. To survive a motion to dismiss under *Federal Rule of Civil Procedure 12(b)(6)*, a plaintiff must allege enough facts to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009)*. In ruling on a motion to dismiss, a court must accept all factual allegations in the complaint as true. *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 572, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*. In order to overcome a *Rule 12(b)(6)* motion, a plaintiff's complaint should "contain either direct allegations on every material point necessary to sustain a recovery ... or contain allegations from which an inference may fairly be drawn that **[*9]** evidence on these material points will be introduced at trial." *Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995)* (quotation omitted). Moreover, the complaint should not simply contain conclusory allegations, but must be pled with a certain level of factual specificity, because the district court cannot "accept as true conclusory allegations or unwarranted deductions of fact." *Collins v. Morgan Stanley Dean Witter, 224 F.3d 496, 498 (5th Cir. 2000)* (quotation omitted). When considering a *Rule 12(b)(6)* motion, a court may consider documents outside the complaint when they are: (1) attached to the motion to dismiss; (2) referenced in the complaint; and (3) central to the plaintiff's claims. *In Re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007)*.

C.Analysis of Motions to Dismiss

I. The Private Defendants

a. The Remax, Riechert, Newland, Republic Title, Murphy, Miller and Stonebridge Defendants

The Remax Defendants [3] argue, *inter alia*, that Plaintiffs' case should be dismissed for lack of subject matter jurisdiction pursuant to *Federal Rule of Civil Procedure 12(b)(1)* because their federal claims are frivolous, and the Court should not retain supplemental jurisdiction **[*10]** over their state claims. (Doc. 9 at 12-15). In the alternative, the Remax Defendants assert that dismissal under *Rule 12(b)(6)* is warranted because (1) Plaintiffs' state claims are barred by the statute of limitations and the doctrine of *res judicata*; (2) their civil rights and conspiracy claims are frivolous; and (3) their fraud claims were not pled with sufficient particularity. (Doc. 9 at 18-21). The Remax Defendants also request that the Court exercise its inherent power to sanction Plaintiffs for filing this frivolous lawsuit. *Id.* at 23-25. Several other defendants have joined the Remax Defendants' *Motion to Dismiss*, requesting the same relief. [4] (Doc. 11). Still others have filed motions to dismiss that are virtually identical to the Remax Defendants' motion. [5] (Doc. 12; Doc. 19; Doc. 27; Doc. 28). Finally,

[2] Several defendants have not entered an appearance, namely (1) The Texas Legislature, (2) the Texas Supreme Court, (3) Clifford Weinstein, and (4) The Law Office of Clifford Weinstein & Associates, and (5) Roeder, Boyd & Joplin, P.C.

[3] The Remax Defendants include (1) Remax North Central Realty; (2) Sally Darnall; (3) Lauren Palmer; (4) Kelly Calkins; (5) Bill J. Williams; (6) the law firm of Williams, Newsom, Terry & Newsom, P.C.; and (7) attorney **[*11]** J. Kent Newsom. (Doc. 9 at 1).

[4] Those Defendants include (1) the Riecherts, (2) attorney Barry Fanning, and (3) the law firm of Fanning, Harper, Martinson, Brandt & Kutchin, P.C. ("the Riechert Defendants").

[5] Those Defendants include (1) Newland Communities, (2) the law firm of Abernathy, Roeder, Boyd, Joplin, P.C., and (3) attorney Richard M. Abernathy (the "Newland Defendants") (Doc. 12); (1) Republic Title of Texas, Inc., (2) First American Title Insurance Company, (3) the law firm of Hightower & Hartmann, P.C., and (4) attorney Rick Hightower (the "Republic Title Defendants") (Doc. 19); (1) Thomas Murphy, (2) Murphy Homes Group, (3) attorney

several Defendants have joined in the Newland Defendants' *Motion to Dismiss*. [6] (Doc. 24). Consequently, the Court considers these Defendants' arguments together.

i. Section 1983 Claims

Section 1983 "provides a federal cause of action **[*12]** for the deprivation, under color of law, of a citizen's 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Livadas v. Bradshaw, 512 U.S. 107, 132, 114 S. Ct. 2068, 129 L. Ed. 2d 93 (1994)*. To state a claim under *section 1983*, Plaintiffs must allege facts that show that (1) they have been deprived of a right secured by the Constitution and the laws of the United States, and (2) Defendants were acting under color of state law. *See Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155, 98 S. Ct. 1729, 56 L. Ed. 2d 185 (1978)*.

As an initial matter, to the extent Plaintiffs attempt to raise *section 1983* claims against the Remax, Riechert, Newland, Republic Title, Murphy, Miller, and Stonebridge Defendants, those claims should be dismissed with prejudice because such an action may not be brought against a private defendant. "[T]he under-color-of-state-law element of *§ 1983* excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 119 S. Ct. 977, 143 L. Ed. 2d 130 (1999)* (some quotations omitted).

A party who is not a state official can be liable under *section 1983*, however, if the private person is involved in a conspiracy to participate in the unlawful action with a **[*13]** state official. *Adickes v. S.H. Kress & Co., 398 U.S. 144, 152, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)*. To withstand dismissal of a *section 1983* conspiracy claim, a plaintiff still must plead "specific facts, not merely conclusory allegations." *Hale v. Harney, 786 F.2d 688, 690 (5th Cir. 1986)*. Here, Plaintiffs allege that a conspiracy existed among all levels of the state court system and among various Defendant attorneys to obstruct justice, discriminate against Plaintiffs, and deprive them of due process and property. (Doc. 3 at 20-21, 23, 43, 45, 50, 58). Plaintiffs' asserted conspiracy scenario is not only factually unsupported, it borders on the frivolous. *Denton v. Hernandez, 504 U.S. 25, 33, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992)* (holding that "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or wholly incredible, whether or not there are judicially noticeable facts available to contradict them."). It is clear to the Court that no such conspiracy existed that would allow Plaintiffs to state a claim for civil rights violations by any of the private parties. As aptly noted by the Defendants, "being on the winning side of a lawsuit does not make a private party a joint actor with **[*14]** the judge." *Dennis v. Sparks, 449 U.S. 24, 28, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980)*. While it appears from the face of Plaintiffs' complaint that this claim lacks merit, the Court does not find that the claim cannot serve as the basis for federal subject matter jurisdiction. *Hagans, 415 U.S. at 536*. Accordingly, Plaintiffs' *section 1983* claims against these Defendants should be dismissed for failure to state a claim, and not on jurisdictional grounds. *Bell, 327 U.S. at 682*.

ii. Federal Discrimination Claims

In various places throughout Plaintiffs' complaint, they allege that several of the Defendants discriminated against them on the basis of their age and disabilities. (Doc. 3 at 18, 58, 71). There is no general federal right to be free from age discrimination, and Plaintiffs do not allege that any of these Defendants were their employers and discriminated against them in that capacity. *See 29 U.S.C. § 623* (Age Discrimination in Employment Act); *42 U.S.C. § 12111 to 12117* (Title I of the Americans with Disabilities Act, prohibiting discrimination in employment).

Any other type of claim that Plaintiffs are attempting to raise under the Americans with Disabilities Act also fails because they have not alleged violations **[*15]** of (1) Title II of that Act, which prohibits discrimination with respect to public services, *42 U.S.C. §§ 12131 to 12165*; (2) Title III, which covers public accommodations and services operated by private entities, *42 U.S.C. §§ 12181 to 12189*; or (3) Title IV, which prohibits retaliation against and coercion of a disabled individual who is attempting to exercise their rights under the ADA. *42 U.S.C. §§ 12201 to 12213*.

To the extent Plaintiffs are attempting to raise a discrimination conspiracy claim under *42 U.S.C. § 1985(3)*, any such claim cannot survive. That section provides a cause of action to any person or class of persons who are deprived of the equal protection of the laws. To fall within the protection of *section 1985(3)*, a plaintiff must show both a private deprivation of the enjoyment of the law and a class-based, discriminatory motivation by the defendant. *McLellan v. Mississippi Power & Light Co., 545 F.2d 919, 924 (5th Cir.*

James Rudnicki, and (4) the law firm of Bush, Rudnicki, Shelton, P.C. (the "Murphy Defendants") (Doc. 25); and (1) Aaron D. Miller, (2) AHI, (3) attorney Carl David Adams, and (4) The Law Office of Carl David Adams (the "Miller Defendants") (Doc. 27; Doc. 28).

[6] Those Defendants include (1) the Stonebridge Ranch Homeowners Association, Inc., (2) RTI Community Management Associates, Inc., (3) Roberts, Markel, Weinberg, P.C., and (4) Dawn S. Holiday (the "Stonebridge Defendants").

1977) (*en banc*). Even assuming that Plaintiffs can show that various Defendants conspired to act contrary to the law, which the Court finds highly unlikely, Plaintiffs certainly have not alleged that any of the Defendants undertook such action *because* ***[*16]*** *of* Plaintiffs' age or disability. *See* Earnest v. Lowentritt, 690 F.2d 1198, 1203 (5th Cir. 1982) (upholding the dismissal of a complaint filed under section 1985(3) where the plaintiffs alleged that racist attitudes existed in general, but there was nothing in the record to suggest that the defendants were motivated by any racially-based animus).

In sum, Plaintiffs' federal discrimination claims are meritless and fail to state a claim for relief. Those claims should be dismissed with prejudice as to the Remax, Riechert, Newland, Republic Title, Murphy, Miller, and Stonebridge Defendants. *See* McConathy v. Dr. Pepper/Seven Up Corp., 131 F.3d 558, 561-62 (5th Cir. 1998) (noting that dismissal with prejudice is appropriate if it appears that no relief can be granted under any set of facts that could be proven consistent with the plaintiff's allegations).

iii. State Law Claims

Whether the Court Should Retain Jurisdiction Over the Supplemental Claims

In light of the recommended dismissal of Plaintiffs' federal claims, the Court must now consider whether to retain jurisdiction of their state law claims or dismiss them pursuant to 28 U.S.C. § 1367(c)(3) (providing that the district court can decline **[*17]** to exercise supplemental jurisdiction if the court has dismissed all claims over which it had original jurisdiction). The Court must consider both the statutory factors as well as certain common law factors in making that determination. Enochs v. Lampasas County, 641 F.3d 155, 159 (5th Cir. 2011). The statutory factors are: (1) whether the state claims raise novel or complex issues of state law, which they do not in this case; (2) whether the state claims substantially predominate over the federal claims, which is the case here and weighs in favor of dismissing the claims; (3) whether the federal claims have been dismissed, a factor which also weighs in favor of dismissal in this case; and (4) whether there are exceptional circumstances or other compelling reasons for the Court to decline to exercise jurisdiction. *Id.* In this case, the last factor weighs in favor of the Court's exercise of federal jurisdiction given the frivolous nature of this suit. It would serve no purpose to dismiss Plaintiffs' claims without prejudice and allow them to re-file their state law claims in state court and further abuse the legal process.

The common law factors that the Court considers in deciding whether **[*18]** to retain jurisdiction of Plaintiffs' state law claims are: (1) judicial economy, which favors the exercise of federal jurisdiction; (2) convenience, which is not a significant factor given that this forum appears equally convenient for all parties; (3) fairness, which weighs in favor of federal jurisdiction because Plaintiffs selected this forum, and Defendants are entitled to finality in this litigation; and (4) comity, which would suggest that dismissal of the state claims is appropriate. *Id.* Upon review of the statutory and common law factors, the undersigned finds that the balance of the factors weighs in favor of the Court retaining jurisdiction of the state law claims.

The Untimely State Law Claims

Upon review, it is clear from Plaintiffs' complaint that their state law claims for (1) defamation/slander (against Remax Realty); (2) negligent misrepresentation (against the Riecherts, Remax Realty and its realtors, and Republic Title); (3) breach of contract (against the Riecherts, Remax Realty, both title companies, and the home inspector); and (4) fraud (against the Riecherts, Remax Realty and its realtors, both title insurance companies, the home inspector, homeowners' association, **[*19]** community management company, and home developer) are barred by the respective statutes of limitations — one year for defamation and slander, two years for negligent misrepresentation, and four years for breach of contract and fraud. Tex. Civ. Prac. & Rem. Code §§ 16.002, 16.004(a)(4), 16.051; HECI Exploration Co. v. Neel, 982 S.W.2d 881, 885 (Tex. 1998). In particular, Plaintiffs were aware of these claims no later than May 2008 when they filed their state court petition raising similar claims, and they did not file this action until more than four years later. Plaintiffs' contention that the statute of limitations was equitably tolled due to the Defendants' concealment of acts is meritless. (Doc. 35 at 71). Plaintiffs filed their state court petition in May 2008 complaining of similar acts, more than four years before they filed this action. Accordingly, Plaintiffs' state claims should be dismissed with prejudice as untimely as to (1) Jerry and Lori Reichert, (2) the Stonebridge Ranch Homeowners Association, (3) RTI/CMA Management Company, (4) Newland Communities, (5) Remax North Central, (6) Sally Darnall, (7) Lauren Palmer, (8) Kelly Calkins, (9) AHI, (10) Aaron D. Miller, (11) **[*20]** Republic Title of Texas, (12) First American Title Insurance Company, (13) Thomas Murphy, and (14) Murphy Home Group. [7]

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[7] The claims are also likely barred by the doctrine of *res judicata* due to the preclusive effect of the Texas state court judgment against Plaintiffs and in favor of the various parties to the real estate

The Claims Against Counsel and Their Law Firms

The only remaining state law claims Plaintiffs raise are against Attorneys J. Kent Newsom, Rick Hightower, Barry Fanning, Richard Abernathy, [*21] Carl Adams, James Rudnicki and their respective law firms. (Doc. 3 at 58). These attorneys all represented other parties to this action at some point. Plaintiffs contend that the attorneys were negligent and acted in bad faith, presumably in litigating against them. However, under Texas law, attorneys are not liable for damages in this type of action because there is no privity of contract. *Am. Cent. Ins. Co. v. Canal Ins. Co., 843 S.W.2d 480 (Tex. 1992)*. Accordingly, Plaintiffs' claims against counsel and their firms fail and should be dismissed with prejudice.

In sum, the Remax Defendants' *Motion to Dismiss* (Doc. 9), the Riechert Defendants' *Motion to Dismiss* (Doc. 11), the Newland Defendants' *Motion to Dismiss* (Doc. 12), the Republic Title Defendants' *Motion to Dismiss* (Doc. 19), the Stonebridge Defendants' *Motion to Dismiss* (Doc. 24), the Murphy Defendants' *Motion to Dismiss* (Doc. 25), and the Miller Defendants' *Motion to Dismiss* (Docs. 27, 28) should be **GRANTED**.

b. The Risinger Defendants

Plaintiffs alleged in their complaint that they hired Defendant Linda Risinger to represent them in their state court property action, but she committed legal malpractice, theft, and fraud. (Doc. [*22] 3 at 53-54). Linda Risinger and The Law Office of Linda Risinger ("the Risinger Defendants") move to dismiss under *Rule 12(b)(1)* arguing, *inter alia*, that no subject matter jurisdiction exists because Plaintiffs' claims against them sound solely in legal malpractice, and the Court should not exercise supplemental jurisdiction over those claims. (Doc. 20 at 5-7). Alternatively, Defendants contend that Plaintiffs' malpractice claim fails under *Rule 12(b)(6)* because the two-year statute of limitations has expired. *Id.* at 7-8.

For the reasons discussed above, *supra* pp. 8-9, the Court should retain jurisdiction over Plaintiffs' malpractice claim against the Rising Defendants as well. *Enochs, 641 F.3d at 159*. Further, the Court should dismiss the claim as untimely based on the two-year statute of limitations that applies to legal malpractice claims. *Tex. Civ. Prac. & Rem. Code §16.003(a)*. Plaintiffs admit that they hired the Risinger Defendants in April 2009 and that the Risinger Defendants withdrew from representation in June 2009. (Doc. 3 at 53-54; Doc. 35-1 at 18). Plaintiffs did not file this suit until almost three years later. Accordingly, the Risinger Defendants' *Motion to Dismiss* [*23] (Doc. 20) should be **GRANTED** and Plaintiffs' claims against them should be dismissed with prejudice.

2. The Public Defendants

a. The Texas Judges

Plaintiffs alleged that the various judges who presided over the numerous lawsuits and appeals they filed after they purchased their home acted unethically, displayed bias against them in making decisions, and refused to either recuse themselves or order the recusal of other judges. (Doc. 3 at 46-52). The Texas Judges move for dismissal of Plaintiffs' complaint on the basis of judicial and sovereign immunity. (Doc. 7 at 2-5). Plaintiffs respond that the Texas Judges are not entitled to immunity for their criminal, unconstitutional, and fraudulent acts. (Doc. 8 at 13-39).

Judicial immunity protects judges from suit as to claims for money damages in all actions taken in their judicial capacities, so long as they do not act in the clear absence of all jurisdiction. *Mireles v. Waco, 502 U.S. 9, 11-12, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991)*. Judicial immunity applies even when a judge is accused of acting maliciously and corruptly. *Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994)*. In this case, the Texas Judges were acting in their judicial capacities in ruling on Plaintiffs' state [*24] cases, and Plaintiffs cannot plausibly argue that the Texas Judges acted in the clear absence of all jurisdiction in doing so. Accordingly, the Texas Judges are entitled to judicial immunity. As such, their *Motion to Dismiss* (Doc. 7) should be **GRANTED**, and Plaintiffs' claims against them should be dismissed with prejudice.

b. The Texas State Defendants

Plaintiff alleged that these Defendants took various actions against her that violated her constitutional and state law

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transaction. *See* Doc. 19-16 at 2-54 (Plaintiffs' Ninth Amended State Court Petition); Doc. 19-12 at 14 (state court judgment summarily dismissing case); Doc. 19-17 at 6-7 (appellate court opinion affirming state court judgment). *See Amstadt v. U.S. Brass Corp., 919 S.W.2d 644, 652 (Tex. 1996)* (holding that a party seeking to have an action dismissed based on *res judicata* must show (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) that the same parties, or those in privity with them, were involved in the prior case; and (3) that the second action is based on the same claims that were raised or on claims that could have been raised in the first action).

rights. (Doc. 3 at 41, 57-58, 60-67). The State of Texas, Governor Rick Perry, Texas Attorney General Greg Abbott, Texas Secretary of State Hope Andrade, the Court of Appeals — 5th District of Texas, the Texas Real Estate Commission, the Texas Department of Insurance, Commissioner Eleanor Kitzman of the Texas Department of Insurance, and the State Commission on Judicial Conduct, in their official capacities (collectively, the "State Defendants") have moved to dismiss for, *inter alia*, lack of subject matter jurisdiction. (Doc. 17 at 1, 4-5). The State Bar of Texas also moves for dismissal on the same basis. (Doc. 6 at 1-2). The State Defendants and the State Bar of Texas contend that the Court lacks jurisdiction based **[*25]** on their *Eleventh Amendment* immunity.

The *Eleventh Amendment* bars claims against a state as well as against state officials when "the state is a real, substantial party in interest." *Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 101-02, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)* (citations omitted). In this case, Plaintiffs have sued various individual state officers, but given the allegations against them, it is clear that the state is the real party in interest. *Id.* Further, the State Bar of Texas is a state agency that is also protected by *Eleventh Amendment* immunity. *Green v. State Bar of Texas, 27 F.3d 1083, 1087 (5th Cir. 1994)*. Accordingly, all of the State Defendants and the State Bar of Texas are entitled to dismissal with prejudice of the claims Plaintiffs filed against them, and their *Motions to Dismiss* (Docs. 6 and 17) should be **GRANTED**.

c. Collin County Appraisal District

Plaintiffs appear to allege that this Defendant, the CCAD, used larger homes in better condition as improper comparisons to establish the appraised value of their home. (Doc. 3 at 59-60). Plaintiffs state that they are suing due to the resulting inaccurate state records and unfair comparisons even though they concede that they filed **[*26]** a successful appeal of their appraisal, after which their home's appraised value was lowered by more than $100,000. *Id.* at 60.

The CCAD argues, *inter alia*, that it is a political subdivision of the State of Texas and, as such, is entitled to sovereign immunity and *Eleventh Amendment* immunity. [8] (Doc. 13 at 3-4). The CCAD thus seeks dismissal of Plaintiffs' complaint for lack of subject matter jurisdiction pursuant to *Rule 12(b)(1)*. *Id.* at 4.

An appraisal district is a political subdivision of the state. *Tex. Tax Code § 6.01*. As previously noted, the *Eleventh Amendment* bars claims against a state entity. *Pennhurst, 465 U.S. at 101-02*. Thus, in a resident's claim against a county appraisal district, in which the resident seeks to challenge the amount of property taxes paid, the appraisal district enjoys sovereign immunity. *Reed v. Prince, 194 S.W.3d 101, 107 (Tex. App.— Texarkana, 2006)*. Accordingly, the CCAD's *Motion to Dismiss* (Doc. 13) should be **GRANTED**, and Plaintiffs' claims against the CCAD should be dismissed **[*27]** with prejudice for lack of subject matter jurisdiction. The CCAD's second *Motion to Dismiss* (Doc. 14) should be **DENIED AS MOOT**.

d. City of McKinney/McKinney City Counsel

Plaintiffs allege in their complaint that one of them spoke at a McKinney City Counsel meeting about the state judges' alleged corruption and bias against Plaintiff, but those in attendance at the meeting ignored them. (Doc. 3 at 12). The City of McKinney moves for dismissal pursuant to *Rule 12(b)(6)*, arguing that Plaintiffs' claims cannot support a cause of action. (Doc. 15 at 3-4). The Court agrees. To the extent Plaintiffs are attempting to allege a due process violation, any *section 1983* claim of that nature clearly fails. Plaintiffs plainly state that they are attempting to impose *respondeat superior* liability on all entities that they sue. (Doc. 3 at 17). However, a "municipality cannot be held liable *solely* because it employs a tortfeasor — or, in other words, a municipality cannot be held liable under *§ 1983* on a *respondeat superior* theory." *Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)* (emphasis in original). Accordingly, Plaintiffs' claims against the City of McKinney should be **[*28]** dismissed with prejudice, and the City's *Motion to Dismiss* (Doc. 15) should be **GRANTED**.

e. Collin County, Collin County Administrative Court, Collin County District Clerk, Collin County District Attorneys' Office, and Collin County District Attorneys

Plaintiffs allege in their complaint that Plaintiff Amrhein went to the administrative Collin County judge to complain about other state judges' corruption, but her complaints were ignored. (Doc. 3 at 12, 14). Plaintiffs contend that they filed complaints with the Collin County District Attorneys' Office seeking an investigation into the judicial misconduct to no avail. *Id.* In particular, they claim that District Attorneys Roach and Willis ignored Plaintiffs' complaints. *Id.* at 59. Plaintiffs maintain that these actions violated their constitutional right to due process. *Id.* at 13, 15. Plaintiffs also aver that the Collin County District Clerk refused to file some

[8] The CCAD has filed two *Motions to Dismiss*, raising separate bases for dismissal. (Doc. 13; Doc. 14). In the interest of judicial economy, the Court will address only one of them.

of their pleadings, withheld documents, and refused to set their motions for hearings. *Id.* at 52. However, upon review, Plaintiffs are complaining about alleged actions taken by various filing clerks, not the District Clerk. *Id.*

Subject to their *Motion to Transfer Venue* (Doc. 18), **[*29]** these Defendants (collectively, "the Collin County Defendants") move for dismissal of Plaintiffs' complaint for lack of subject matter jurisdiction for the same reasons alleged by the Remax Defendants. (Doc. 23 at 6). Additionally, the Collin County Defendants maintain that dismissal is warranted under Rule 12(b)(6) because (1) Plaintiffs fail to state a claim against them; and (2) the District Attorneys' Office and Collin County Administrative Court lack the capacity to be sued. *Id.* at 6-7.

To hold a municipal entity like Collin County liable under *section 1983*, Plaintiffs must show that there was either an official policy or an unofficial custom, adopted by the county, that was the moving force behind the claimed constitutional violation. Duvall v. Dallas County, Tex., 631 F.3d 203, 209 (5th Cir. 2011). In this case, Plaintiffs have made no such allegation, nor could they plausibly argue such.

The claims against the Collin County District Attorney's Office likewise fail. A plaintiff may not bring a civil rights action against a servient political department unless the agency has a separate and distinct legal existence. Darby v. Pasadena Police Dep't, 939 F.2d 311, 313-14 (5th Cir. 1991) **[*30]** (holding that "unless the true political entity has taken explicit steps to grant the servient agency with jural authority, the agency cannot engage in any litigation except in concert with the government itself."). The Collin County District Attorney's office is not a free-standing entity that can be sued under *section 1983*. *See Jacobs v. Port Neches Police Dep't, 915 F. Supp. 842, 844 (E.D. Tex. 1996)* (discussing the Jefferson County District Attorney's Office).

Similarly, the Collin County Administrative Court is not a legal entity subject to suit. *See* Moore v. Crowley Courts, 2007 U.S. Dist. LEXIS 78231, 2007 WL 3071188, *2 n.1 (N.D. Tex. 2007) (noting that the "Crowley Courts" were not a jural entity capable of being sued) (Lynn, J.); Daniel v. Dallas Co. Commissioner's Court, 2001 U.S. Dist. LEXIS 3720, 2001 WL 167923, *1 (N.D. Tex. 2001) (Stickney, M.J.) (holding that a county court was not a separate entity with a jural existence).

The claims that Plaintiffs purport to raise against District Attorneys Roach and Willis also should be dismissed because the prosecutors enjoy prosecutorial immunity from this action. *See* Lampton v. Diaz, 639 F.3d 223, 226 (5th Cir. 2011) (noting the differences between absolute immunity and qualified prosecutorial **[*31]** immunity, which attaches when a prosecutor is acting only in an investigative or administrative capacity). A district attorney is entitled to absolute immunity when he or she makes a decision whether to charge a crime. *See* Bittakis v. City of El Paso, 480 F.Supp.2d 895, 906, 915-16 (W.D. Tex. 2007) (holding that a district attorney was entitled to absolute immunity where the actions taken in using a case management system to finalize a charging decision and bond amount were in preparation for the initiation of judicial proceedings). Similarly, District Attorneys Roach and Willis were acting in their prosecutorial capacity when they declined to investigate and charge anyone after learning about Plaintiffs' allegations of wrongdoing. Accordingly, the claims against them should be dismissed with prejudice.

Finally, any claim that Plaintiffs purport to raise against the Collin County District Clerk fail. Those claims are pled solely in *respondeat superior* against the Clerk for actions of her subordinates, and *respondeat superior* liability is not applicable in *section 1983* actions. Monell, 436 U.S. at 691. Accordingly, the Collin County Defendants' *Motion to Dismiss* (Doc. 23) should be **GRANTED,** **[*32]** and Plaintiffs' claims against them should be dismissed with prejudice. The Collin County Defendants' alternative *Motion to Transfer Venue* to the Eastern District of Texas (Doc. 18) should be **DENIED AS MOOT.**

D. Plaintiffs' Motions

1. Motion for Alternative Service

Plaintiffs first move the Court to allow for alternative service of process on Defendants Clifford Weinstein and The Law Offices of Clifford I. Weinstein & Associates. (Doc. 10). Plaintiffs contend that they learned that Mr. Weinstein died in January 2012, and they request that service alternatively be permitted upon another member of his family. *Id.* at 2.

Federal Rule of Civil Procedure 4(e) provides that "[A]n individual . . . may be served in a judicial district of the United States by: (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). Because this Court is located in Texas, the undersigned will apply Texas law. Texas Rule of Civil Procedure 106 allows for alternative service of process on a defendant if service has been attempted unsuccessfully, and the court determines that **[*33]** another method of service will be reasonably effective to give the defendant notice of the suit. *See* Tex. R. Civ. P. 106.

Nevertheless, the undersigned recommends that the Court not direct alternative service of process because the suit Plaintiffs purport to bring against the decedent's estate and firm is baseless. *See generally* Anderson v. Davison, 479 S.W.2d 691, 693 (Tex. Civ. App. 1972) (holding that where a judgment has been awarded without proper service of the citation on the defendant, to overturn the default, the defendant must prove both improper service *and* a meritorious defense).

Plaintiffs allege that Mr. Weinstein committed malpractice and violated their civil rights while representing them for a short period of time in August 2009. Plaintiffs indicate that they had their last interaction with Mr. Weinstein in September 2009 after a court hearing. (Doc. 3 at 51-52). As previously discussed, Plaintiffs cannot bring a cause of action against a private party via *section 1983* under the circumstances presented. *Sullivan, 526 U.S. at 50.* Plaintiffs' remaining allegations against Mr. Weinstein sound in malpractice, which has a two-year statute of limitations. Tex. Civ. Prac. & Rem. Code §16.003(a). **[*34]** The statute of limitations expired in September 2011, one year before Plaintiffs filed this lawsuit. Because Plaintiffs' claims against Mr. Weinstein and his law firm cannot succeed in this Court, the undersigned recommends that Plaintiffs' *Motion for Alternative Service* (Doc. 10) be **DENIED**.

2. Motion to Amend

a. Proposed State Law Claims

Plaintiffs move to amend their complaint and appear to have incorporated their proposed amended complaint into their consolidated response to the Defendants' dismissal motions. (Doc. 34; Doc. 35). A review of Plaintiffs' proposed amended complaint reveals that they wish to raise numerous causes of action against Defendants for (1) fraud; (2) breach of contract; (3) defamation; (4) negligent misrepresentation; (5) breach of the Deceptive Trade Practices Act ("DTPA"), and a host of other claims arising out of the purchase of their home. (Doc. 35-1 at 20-48, 55-74, 82-86, 89-91). As discussed above, however, any actions for fraud, defamation breach of contract, and negligent misrepresentation are barred by the statute of limitations. *See supra* at p. 10.

Further, the applicable statutes of limitations also would bar Plaintiffs' proposed claims for conversion **[*35]** (two-year statute of limitations), breach of fiduciary duty (four years), breach of the DTPA (two years), invasion of privacy (two years), intentional infliction of emotional distress (two years), and breach of warranty (four years). *See* Matlock v. McCormick, 948 S.W.2d 308, 311 (Tex. App. — San Antonio, 1997) (invasion of privacy and intentional infliction); Tex. Bus. & Com. Code §§ 2.725(b) (breach of warranty), 17.565 (DTPA claim); Tex. Civ. Prac. & Rem. Code §§ 16.003(a) (conversion), 16.004(a)(5) (breach of fiduciary duty). Thus, granting Plaintiffs leave to amend their complaint to add these causes of action would be futile. In re Southmark Corp., 88 F.3d 311, 314 (5th Cir. 1996) (stating that leave to amend is properly denied if amendment of the complaint would be futile).

b. Proposed Civil RICO Claim

Plaintiffs also state that they wish to amend their complaint to add federal causes of action for civil RICO violations, *18 U.S.C. § 1962*, as well as obstruction of justice, 18 U.S.C. §§ 1501-1517. (Doc. 35-1 at 52-55, 75-77). Plaintiffs' proposed RICO claim is based on their allegation that Defendant Abernathy and his law firm made a campaign contribution to Judge Roach and thereafter **[*36]** received favorable rulings in a lawsuit involving Plaintiffs. *Id.* at 52. Plaintiffs also allege that the Defendants have attempted to silence Plaintiffs and stifle their claims through unexplained acts of extortion, bribery, fraud, theft, and threats. *Id.* at 54.

Civil claims under *18 U.S.C. § 1962* must allege the existence of "(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007). A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity. *Id.* The predicate acts can be either state or federal crimes. St. Germain v. Howard, 556 F.3d 261, 263 (5th Cir. 2009).

For purposes of civil RICO liability, an enterprise is a group of persons or entities associating together for the common purpose of engaging in a course of conduct. United States v. Turkette, 452 U.S. 576, 583, 101 S. Ct. 2524, 69 L. Ed. 2d 246 (1981). The enterprise may be either a legal entity or a "union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). To avoid **[*37]** dismissal for failure to state a claim, a civil RICO plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise. Elliott v. Foufas, 867 F.2d 877, 881 (5th Cir. 1989). The enterprise must be an entity "separate and apart from the pattern of activity in which it engages." *Id.* (citation omitted). If the enterprise alleged is an "association in fact" enterprise, the plaintiff must demonstrate the existence of an "ongoing organization, formal or informal, that functions as a continuing unit over time through a hierarchical or consensual decision-making

structure." *Id.*

Here, Plaintiffs state that "all listed Defendants" are liable under RICO. Nevertheless, Plaintiffs do not plead any specific facts which establish that all of the Defendants are part of an ongoing organization that functions as a continuous unit through a decision-making structure. Further, the undersigned finds it entirely implausible that the numerous Defendants involved in this case could be part of such an entity. *Elliott, 867 F.2d at 881*. Accordingly, Plaintiffs should not be granted leave to amend their complaint to add a civil RICO claim because amendment would **[*38]** be futile. *Southmark, 88 F.3d at 314*.

c. Proposed Obstruction of Justice Claim

Plaintiffs' request to amend their complaint to add an obstruction of justice count under *18 U.S.C. §§ 1501-1517* also should be denied as futile because those sections establish criminal law violations. In order for a private right of action to exist under a criminal statute, there must be "a statutory basis for inferring that a civil cause of action of some sort lay in favor of someone." *Cort v. Ash, 422 U.S. 66, 79, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975)*. Nothing in any of these sections indicates that they are anything more than "bare criminal statute[s]," and the laws do not suggest that civil enforcement of any kind is available to anyone. *Id. at 79-80; see also Linda R.S. v. Richard D., 410 U.S. 614, 619, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973)* (stating that a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another). Accordingly, granting leave to amend would be futile and should be denied. *Southmark, 88 F.3d at 314*.

d. Proposed Abuse of Process and Due Process Claims

Plaintiffs also request leave to amend their complaint to add an abuse of process cause of action against the Texas Judges. (Doc. 35-1 at 50-51). However, **[*39]** the undersigned has already determined that these Defendants are entitled to judicial immunity. Thus, leave to amend to add an additional cause of action against them would be futile and should be denied. *Southmark, 88 F.3d at 314*. Additionally, Plaintiffs seek to add an additional count seeking damages for violation of their due process rights. (Doc. 35-1 at 77-82, 86-89). However, that cause of action already has been disposed of as well. Accordingly, leave to amend to add the proposed claim should be denied.

E. Motions for Sanctions Filed by the Remax, Riechert, Newland, Republic Title, Murphy, Miller, and Stonebridge Defendants

The Remax, Riechert, Newland, Republic Title, Murphy, Miller and Stonebridge Defendants request that the Court exercise its inherent authority to sanction Plaintiffs for continuing to file frivolous claims. In particular, they request that the Court order Plaintiffs to obtain leave of court before filing or serving a complaint in federal court against them on any claims related to the present complaint. (Doc. 9 at 23-24; Doc. 11; Doc. 12 at 25-26; Doc. 19 at 28-29; Doc. 24; Doc. 25 at 24).

In the alternative, the Defendants and their counsel request that the **[*40]** Court sanction Plaintiffs in the amount of attorneys' fees they incurred to respond to Plaintiffs' complaint and impose any additional monetary sanctions necessary to prevent similar filings in the future. (Doc. 9 at 24; Doc. 12 at 26; Doc. 19 at 29; Doc. 25 at 24). Finally, these Defendants also request that the Court declare Plaintiffs to be "vexatious litigants" under *Section 11.051 of the Texas Civil Practice and Remedies Code*. (Doc. 9 at 24-25; Doc. 12 at 25-26; Doc. 19 at 29-30; Doc. 25 at 25-26). The Collin County Defendants also seek substantial sanctions against Plaintiffs, including monetary and injunctive relief, claiming that Plaintiffs are vexatious litigants. (Doc. 23 at 8-9).

The Supreme Court has long recognized that courts have the inherent equitable power to levy sanctions against parties who abuse the litigation process. *See Roadway Express v. Piper, 447 U.S. 752, 766, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980)*. As discussed above, Plaintiffs' claims are utterly meritless and should be dismissed with prejudice. The fact that Plaintiffs are proceeding *pro se* offers them "no impenetrable shield, for one acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, **[*41]** and abuse already overloaded court dockets." *Farguson v. Mbank Houston, N.A., 808 F.2d 358, 359 (5th Cir. 1986)*.

In addition to the present lawsuit, Plaintiffs initiated the following prior proceedings against many, if not all, of the same Defendants, all of which are related to the events and property at issue: (1) Case No. 296-01145-2008 in the District Court for the 296th Judicial District, Collin County, Texas; (2) Case No. 429-01145-2008 in the District Court for the 296th Judicial District, Collin County, Texas; (3) Case No. 296-04897-2009 in the District Court for the 296th Judicial District, Collin County, Texas; (4) Case No. 05-09-01377-CV in the Court of Appeals for the Fifth District of Texas at Dallas; (5) Case No. 05-10-00611-CV in the Court of Appeals for the Fifth District of Texas at Dallas; and (6) Case No. 05-10-01347-CV in the Court of Appeals for the Fifth District of Texas at Dallas. (Doc. 19-2 at 2-45; Doc. 19-5 at 4-Doc. 19-8

at 33; Doc. 19-14 at 3, 30-31; Doc. 19-17 at 6-7). Plaintiffs' petition to the Supreme Court of Texas for review of the intermediate appellate court's decision in Case No. 05-09-01377-CV was denied in December 2012. (Doc. 19-13 at 3).

In their **[*42]** original state court action, which was premised on the same facts that underlie the instant complaint, Plaintiffs amended their petition eight times before the state court finally dismissed the case with prejudice for failure to state a claim. (Doc 19-2 at 30; Doc. 19-17 at 6). As demonstrated by the number of times they were permitted to amend their state court action and the various cases and appeals they have filed, Plaintiffs have had more than enough opportunities to make their case. The time to bring finality to the litigation is now.

However, Plaintiffs have made it clear that they will not cease their contumacious conduct absent some sort of sanction. Indeed, in this very action, Plaintiffs have vexatiously multiplied the litigation by adding as parties various public figures and entities that had little, if anything, to do with the subject matter of the suit. As the Court of Appeals for the Fifth Circuit has observed, "[s]anctions may be necessary because often dismissal alone will not faze a venomous litigant bent on disrupting the judicial system and committed to employing the legal process as a means to torment his enemies." *Day v. Allstate Ins. Co., 788 F.2d 1110, 1114 (5th Cir. 1986)*.

While **[*43]** Plaintiff Amrhein's father, Anthony Balistreri, is ostensibly involved in this lawsuit, it is apparent from the course of the litigation that the primary responsibility for this case lies with Ms. Amrhein. A review of Ms. Amrhein's litigation history in the State of Texas reveals that she has filed at least 22 civil actions in various Collin County courts, two in Dallas County court, and four in Texas federal courts, as well as numerous state appeals and bankruptcy cases.

A review of one of Ms. Amrhein's most recent cases reveals that she engaged in similar litigation tactics to those presently before the Court. In *Amrhein v. Le Madeleine*, Ms. Amrhein filed suit in the Eastern District of Texas after litigating against Le Madeleine restaurant, her former employer, in state court for the prior 14 years. *Amrhein v. Le Madeleine*, 4:11-CV-00364-RAS-DDB; 3:11-CV-2440-P, Doc. 117 at 2. By the time she got to federal court, she had dragged numerous unrelated parties into the suit including, as she has here, the State of Texas, Governor Perry, the Texas Secretary of State, various judges, and the entire Texas state legislature. (3:11-CV-2440-P, Doc. 117 at 2-3). The case was transferred to **[*44]** this Court in September 2011. All told, Ms. Amrhein brought 52 causes of actions against the named parties and alleged numerous constitutional violations. *Id.* at 3. As they are in this case, Ms. Amrhein's filings were voluminous. In December 2012, Judge Solis dismissed Ms. Amrhein's case with prejudice for failure to state a claim. In doing so, Judge Solis instructed Ms. Amrhein not to attempt to re-file her claims and warned her that if she did, he would consider imposing sanctions against her. *Id.* at 7. Despite this admonition, Ms. Amrhein persisted and has filed both a *Motion for Reconsideration* and a *Motion for Leave to File an Amended Complaint*. (3:11-CV-2440-P at Docs. 120, 121). Those motions remain pending at this time.

Upon review of Ms. Amrhein's litigation history and consideration of the parties' pleadings, the undersigned recommends that the Court enter a pre-filing injunction against Ms. Amrhein to be applied in all district courts in the United States. The injunction should specify that Ms. Amrhein will not be permitted to file any new civil action in any district court unless she first files a motion requesting leave of court to do so and attaches thereto a copy of her **[*45]** proposed complaint and a copy of the Court's order imposing the injunction.

F.Conclusion

For the reasons discussed above, the Court recommends that Defendants' *Motions to Dismiss* (Docs. 6, 7, 9, 11, 12, 13, 15, 17, 19, 20, 23, 24, 25, 27, 28) be **GRANTED**, Defendant CCAD's additional *Motion to Dismiss* (Doc. 14) be **DENIED AS MOOT**, Defendant Collin County's *Motion to Transfer Venue* be **DENIED AS MOOT**, and Plaintiffs' *Motion for Alternative Service* (Doc. 10) and *Motion for Leave to Amend Plaintiffs' Complaint* (Doc. 34) be **DENIED**. The Court also recommends that sanctions be imposed as described above.

SO RECOMMENDED on February 1, 2013.

/s/ Renée Harris Toliver

RENÉE HARRIS TOLIVER

UNITED STATES MAGISTRATE JUDGE

End of Document

EXHIBIT F-2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DARLENE C. AMRHEIN, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
VS.	)	
	)	3:12-CV-3707-G (BK)
JERRY RIECHERT, ET AL.,	)	
	)	
Defendants.	)	

ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The district court reviewed the proposed findings, conclusions and recommendation for plain error. Finding none, the court **ACCEPTS** the findings, conclusions and recommendation of the United States Magistrate Judge.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that defendants' motions to dismiss (docket entries 6, 7, 9, 11, 12, 13, 15, 17, 19, 20, 23, 24, 25, 27, 28) are **GRANTED**. Plaintiffs' claims against all defendants, except Clifford

Weinstein, Law Office of Clifford Weinstein and Associates, Texas State Legislature and All Senators, and Supreme Court of Texas*, are **DISMISSED** with prejudice.

Additionally, defendant Collin County Central Appraisal District's ("CCCAD") motion to dismiss (docket entry 14) is **DENIED** as moot, defendant CCCAD's motion to transfer venue (docket entry 18) is **DENIED** as moot, and plaintiffs' motion for alternative service (docket entry 10) and motion for leave to amend plaintiffs' complaint (docket entry 34) are **DENIED**.

Further, **Darlene Amrhein is prohibited from filing any new civil action in any United States district court** unless she first files a motion requesting leave of court to do so and attaches thereto copies of (1) her proposed complaint, (2) the magistrate judge's findings, conclusions and recommendation in this case, (3) this court's order accepting the findings, conclusions and recommendation of the United States Magistrate Judge, and (4) the judgment in this case.

March 21, 2013.

A. Joe Fish

A. JOE FISH
Senior United States District Judge

---

* It is unclear from the record that the named defendants have been properly served. In any event, they have yet to answer or otherwise appear.

EXHIBIT F-3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DARLENE C. AMRHEIN, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
VS.	)	
	)	3:12-CV-3707-G (BK)
JERRY RIECHERT, ET AL.,	)	
	)	
Defendants.	)	

JUDGMENT

The court has entered its orders accepting the findings, conclusions and recommendation of the United States Magistrate Judge in this case.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that defendants' motions to dismiss (docket entries 6, 7, 9, 11, 12, 13, 15, 17, 19, 20, 23, 24, 25, 27, and 28) are **GRANTED**. Accordingly, plaintiffs' complaint is **DISMISSED** with prejudice as to (1) the State Bar of Texas; (2) Judges Richard D. Davis, Richard Mays, Chris Oldner, John Ovard, John Roach, and Jill Willis; (3) Remax North Central Realty, Sally Darnall, Lauren Palmer, Kelly Calkins, Bill J. Williams, the law

firm of WILLIAMS, NEWSOM, TERRY & NEWSOM, P.C., and attorney J. Kent Newsom; (4) Barry Fanning, Fanning Harper & Martinson PC, Jerry Riechert, and Lori Riechert; (5) Richard Abernathy, Newland Communities, and Abernathy, Roeder, Boyd & Joplin; (6) Collin County Central Appraisal District; (7) City of McKinney/McKinney City Counsel; (8) Greg Abbott, Hope Andrade, Court of Appeals Fifth District of Texas at Dallas, Eleanor Kitzman, Rick Perry, State of Texas, Texas Department of Insurance, Texas Judicial Commission, and Texas Real Estate Commission; (9) Bigger, Beasley, Earl, Hightower PC, First American Title Insurance Company, Rick Hightower, and Republic Title of Texas; (10) Law Office of Linda Risinger and Linda Risinger; (11) Collin County Administrative Court, Collin County District Attorneys' Office, Collin County Texas, and Collin County Clerk Andrea Stoh Thompson; (12) Dawn Holiday, RTI Community Management Associates, Inc., Roberts, Markel, Weinberg PC, and Stonebridge Ranch Homeowners Association; (13) Bush, Rudnicki & Shelton PC, Thomas Murphy, Murphy Home Group, and James Rudnicki; and (14) attorney Carl David Adams, and The Law Office of Carl David Adams.

It is further **ORDERED, ADJUDGED** and **DECREED** that this action is **DISMISSED** without prejudice as to Clifford Weinstein, the Law Office of Clifford Weinstein and Associates, the Texas state legislature and all senators, and the

Supreme Court of Texas based on plaintiffs' failure to timely and correctly serve those defendants.

March 21, 2013.

A. Joe Fish

A. JOE FISH
Senior United States District Judge

EXHIBIT F-4

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

3:12CV3707

No. 13-10450

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 3 2014
CLERK, U.S. DISTRICT COURT
By _____
Deputy

DARLENE C. AMRHEIN; ANTHONY J. BALISTRERI,

Plaintiffs - Appellants

v.

JERRY RIECHERT; LORI RIECHERT; RE MAX NORTH CENTRAL REALTY; SALLY DARNALL, Re Max agent; LAUREN PALMER, (Re Max); KELLY CALKINS, (Re Max); BILL J. WILLIAMS, (Re Max); REPUBLIC TITLE OF TEXAS; FIRST AMERICAN TITLE INSURANCE COMPANY; AHI, Aaron's Home Inspection; STONEBRIDGE RANCH HOMEOWNERS ASSOCIATION; RTI/CMA MANAGEMENT; NEWLAND COMMUNITIES; THOMAS MURPHY; MURPHY HOME GROUP; COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS; CITY OF MCKINNEY/CITY COUNSEL; COLLIN COUNTY TEXAS; COLLIN COUNTY ADMINISTRATIVE COURT; JUDGE JOHN ROACH, 296th Court; JUDGE CHRIS OLDNER, 416th Court; JUDGE RICHARD D. DAVIS; JUDGE JOHN OVARD; JUDGE JILL WILLIS, 429th Court; JUDGE RICHARD MAYS; ANDREA STOH THOMPSON, Collin County District Clerk; LINDA RISINGER, Attorney; LAW OFFICE OF LINDA RISINGER; CLIFFORD WEINSTEIN, Attorney; LAW OFFICE OF CLIFFORD WEINSTEIN AND ASSOCIATES; STATE BAR OF TEXAS; J. KENT NEWSOM, Attorney; NEWSOM, TERRY, NEWSOM, P.C.; RICK HIGHTOWER, Attorney; BIGGER, BEASLEY, EARL, HIGHTOWER, P.C.; BARRY FANNING, Attorney; FANNING HARPER & MARTINSON, P.C.; RICHARD ABERNATHY, Attorney; ROEDER, BOYD & JOPLIN, P.C.; CARL D. ADAMS, Attorney; LAW FIRM OF CARL D. ADAMS; JAMES RUDNICKI, Attorney; BUSH, RUDNICKI & SHELTON, P.C.; DAWN HOLIDAY, Attorney; ROBERTS, MARKEL, WEINBERG, P.C.; STATE OF TEXAS; COLLIN COUNTY DISTRICT ATTORNEYS OFFICE; COLLIN COUNTY CENTRAL APPRAISAL DISTRICT; TEXAS REAL ESTATE COMMISSION; TEXAS JUDICIAL COMMISSION; TEXAS DEPARTMENT OF

INSURANCE; COMMISSIONER ELEANOR KITZMAN, Texas Department of Insurance; TEXAS STATE LEGISLATURE, & All Senators; SUPREME COUT OF TEXAS; GOVERNOR RICK PERRY; GREG ABBOTT, Texas Attorney General; JOHN STEEN, Secretary of State; ABERNATHY, ROEDER, BOYD & JOPLIN,

Defendants - Appellees

Appeal from the United States District Court for the
Northern District of Texas, Dallas

Before PRADO, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the Appellees' joint motion to dismiss appeal is GRANTED.

IT IS FURTHER ORDERED that the Appellees' motion for an expedited ruling on the motion to dismiss is DENIED as moot.

ISSUED AS MANDATE: 27 OCT 2014

A true copy
Attest:
Clerk, U. S. Court of Appeals, Fifth Circuit
By _____ Deputy
New Orleans, Louisiana 27 OCT 2014

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

October 27, 2014

RECEIVED
NOV - 3 2014
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Ms. Karen S. Mitchell
Northern District of Texas, Dallas
United States District Court
1100 Commerce Street
Earle Cabell Federal Building
Room 1452
Dallas, TX 75242

No. 13-10450 Darlene Amrhein, et al v. Jerry Riechert, et al
USDC No. 3:12-CV-3707

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Shawn D. Henderson, Deputy Clerk
504-310-7668

cc w/encl:
Mr. Carl David Adams
Ms. Darlene C. Amrhein
Mr. Anthony J. Balistreri
Mr. Thomas Phillip Brandt
Mr. Bruce A. Campbell
Mr. Robert Jacob Davis
Mr. Barry H. Fanning
Ms. Susan Farris
Honorable A. Joe Fish
Ms. Cynthia West Canfield Hamilton
Mr. David Alan Harris
Ms. Kimberly Paige Harris
Mr. Kai Peter Hecker
Mr. Rick Wayne Hightower
Ms. Dawn S. Holiday
Mr. Lewis L. Isaacks Jr.

Mr. Don David Martinson
Mr. J. Kent Newsom
Mr. Michael James Patterson
Mr. Joshua Alan Skinner
Mr. Gregg Sandler Weinberg
Mr. Ross Wells
Mr. Carl J. Wilkerson

EXHIBIT G-1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DARLENE C BALISTRERI-AMRHEIN, ANTHONY J BALISTRERI, DECEASED;	§	
Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 4:16-CV-00112-ALM-CAN
DONALD VERRILLI, JR., UNITED STATES SOLICITER GENERAL, ET AL.,	§	
Defendants.	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

On February 11, 2016, Plaintiffs Darlene C. Balistreri-Amrhein ("Ms. Amrhein") and Anthony J. Balistreri, deceased ("Mr. Amrhein") (collectively "Plaintiffs") filed a Motion to Proceed *In Forma Pauperis* [Dkt. 3], which the Court provisionally granted on February 19, 2016 [Dkt. 4]. Thereafter, on March 7, 2016, the Court entered an order staying service of process and discovery in this case pending judicial screening of Plaintiffs' Complaint, and directed Plaintiffs to file a Third Amended Complaint that is "clear, succinct, and filed in accordance with the Federal Rules of Civil Procedure and the Eastern District of Texas Local Rules" [Dkt. 124]. Plaintiffs were specifically directed that the Third Amended Complaint should "set forth each cause of action Plaintiffs allege or intend to allege, and shall further specifically identify which causes of action are asserted against which Defendants in this litigation[,] . . . the jurisdictional basis for this suit, the facts underlying each of their causes of action, and the facts supporting claims against each Defendant." *Id.* On March 14, 2016, Plaintiffs filed their Third Amended Complaint [Dkt. 126]. Plaintiffs' Third Amended Complaint is now before the Court for judicial screening pursuant to 28 U.S.C. § 1915(e)(2).

After reviewing the Third Amended Complaint [Dkt. 126] and any other relevant filings, the Court recommends that Plaintiffs' Third Amended Complaint be **DISMISSED**.

BACKGROUND

On February 11, 2016, Plaintiffs filed a Complaint alleging multiple causes of action against Defendants Administrative Office of the United States Courts & Office of General Counsel, J. Atkins Department of Justice, Chairman Goodlatte, Chairman Grassley, Scott Hill, Loretta Lynch, Karen Mitchell, Shelly Saltzman, Jacob Travers, United States Fifth Circuit of Appeals, United States House Judiciary Committee, United States Northern District of Texas, United States Senate Judiciary Committee, United States Supreme Court, United States of American Federal Judges & Justices, and Donald Verrilli, Jr. [Dkt. 1].[1] Plaintiffs also filed a Motion for Leave to Proceed *In Forma Pauperis* [Dkt. 3], which the Court granted on February 19, 2016 [Dkt. 4]. Plaintiffs subsequently filed a First Amended Complaint on

[1] As a threshold matter, the Court notes that Mr. Balistreri is, according to the Plaintiffs' Complaint [Dkt. 1], Plaintiffs' Amended Complaint [Dkt. 5], Plaintiffs' Second Amended Complaint [Dkt. 7], and Plaintiffs' Third Amended Complaint [Dkt. 126], "deceased." Only a real party in interest may properly bring suit in federal court. FED. R. CIV. P. 17(a)-(b). This requirement grows out of a party's personal right to sue. *Doherty v. Mut. Warehouse Co.*, 245 F.2d 609, 611 (5th Cir. 1957). As a result, a party must have a legal existence in order to bring suit, and the dead lack such legal existence. *Adelsberger v. United States*, 58 Fed. Cl. 616, 618 (2003) ("The question presented is whether an action can be initiated in the name of a deceased person. We think the answer is plainly, 'no.' As defendant points out a party must have a legal existence as a prerequisite to having the capacity to sue or be sued."); *see also Edens v. Grogan Cochran Lumber Co.*, 172 S.W.2d 730, (Tex. Civ. App.—Beaumont 1943, writ ref'd w.o.m.) ("Under Texas law a judgment against a party who died before service of process and whose estate has not been made a proper party is void."); FED. R. CIV. P. 17(b) ("Capacity to sue or be sued is determined . . . by the law of the state where the court is located[.]"). Where a deceased person has purportedly filed suit, then, the suit is a nullity as to the deceased person's claims. *Cf. Chorney v. Callahan*, 135 F. Supp. 35, 36 (D. Mass. 1995) ("As originally filed, this action was brought against a named defendant who was already dead. At that point the purported action was a nullity, for a dead man obviously cannot be named party defendant in an action."), *cited with approval in Mizukami v. Buras*, 419 F.2d 1319, 1320 (5th Cir. 1969); *Cheramie v. Orgeron*, 434 F.2d 721, 723 (5th Cir. 1970) ("[T]he rule [regarding substitution of parties] is clear that the death of one defendant and a resulting abatement of an action against him does not abate the action as to the remaining defendants."); *Banakus v. United Aircraft Corp.*, 290 F. Supp. 259, (S.D.N.Y. 1968) (dismissing claim brought by deceased's attorney, who filed suit on behalf of deceased without knowing that deceased had died thirty-five minutes earlier). Mr. Balistreri predeceased the filing of the present case [*see* Dkts. 1, 5, 7, 126, 127]. As a result, Mr. Balistreri is not a "real party in interest" in this suit. His claims presented in Plaintiffs' Third Amended Complaint are null, therefore, unless those claims are asserted in a representative capacity. None of the proffered documents establish either that Mr. Balistreri's estate is extant or that Ms. Amrhein is such estate's legal representative [*cf.* Dkt. 126, Exs. 3-4]. Accordingly, the Court recommends dismissal of Mr. Balistreri's claims. Ms. Amrhein is a real party in interest in this suit, and the Court therefore continues to evaluate the claims presented in Plaintiffs' Third Amended Complaint.

February 22, 2016 [Dkt. 5], and a Second Amended Complaint on March 1, 2016, adding a significant number of parties to this action [Dkt. 7]. On March 7, 2016, the Court ordered Plaintiffs to file a Third Amended Complaint and stayed service of process pending judicial screening of that Complaint. *Id.* Plaintiffs filed their Third Amended Complaint on March 14, 2016 [Dkt. 126]. Plaintiffs' Third Amended Complaint is the live pleading in this matter; Plaintiffs' Third Amended Complaint purports to name more than one hundred twenty Defendants and to assert numerous causes of action against each of them individually. *Id.* Notably, Plaintiffs have previously asserted the allegations contained in the Third Amended Complaint (or similar allegations) against many of the defendants named therein. *See, e.g.*, *Amrhein v. Riechert ("Amrhein I")*, No. 3:12-CV-03707-G-BK, 2013 WL 1155473, at *13-14 (N.D. Tex. Feb. 1, 2013), *rec. adopted Amrhein v. Reichert ("Amrhein I Order")*, 2013 WL 1174571 (N.D. Tex. Mar. 21, 2013) (dismissing with prejudice all of Plaintiffs' claims against served defendants); *Amrhein v. Riechert ("Amrhein II")*, No. 3:12-CV-03707-G-BK, 2013 WL 1174626, at *1-2 (N.D. Tex. Feb. 15, 2013), *rec. adopted Amrhein v. Reichert ("Amrhein II Order")*, 2013 WL 1181273 (N.D. Tex. Mar. 21, 2013) (dismissing without prejudice all of Plaintiffs' claims against unserved defendants). Indeed, in light of Plaintiffs' litigation history, the Northern District of Texas entered a pre-filing injunction, which reads as follows:

> **Darlene Amrhein is prohibited from filing any new civil action in any United States district court** unless she first files a motion requesting leave of court to do so and attaches thereto copies of (1) her proposed complaint, (2) the magistrate judge's findings, conclusions and recommendation in this case, (3) this court's order accepting the findings, conclusions and recommendation of the United States Magistrate Judge, and (4) the judgment in this case.

Amrhein I Order, 2013 WL 1174571, at *1; *see also Amrhein I*, 2013 WL 1155473, at *13-14 (outlining Plaintiffs' litigation history). Plaintiffs failed to comply with the Order of the Northern District of Texas (the "Pre-filing Injunction") in the present case.

At its heart, Plaintiffs' Third Amended Complaint alleges that Defendants Jerry and Lori Riechert, among others, breached a real estate contract and engaged in fraud and other wrongdoing in the sale of a piece of real property to Plaintiffs (the "Transaction").[2] *Id.* at 1-4. Dissatisfied with the Transaction—due to purported defects in the property, code violations, and the alleged wrongdoing—Plaintiffs filed suit on May 19, 2008, in Texas state court in Collin County (Case Nos. 296-01145-2008 (before Judge John Roach, Jr.), 296-04897-2009 (same), 429-01145-2008 (before Judge Jill Willis)), and prosecuted appeals thereon (Case No. 05-09-01377) (hereinafter and collectively the "Original State Civil Actions"). *Id.* at 5. The Original State Civil Actions concluded when the Texas Supreme Court denied Plaintiffs' petition for review in 2012. *See id.*

In September 2012, while the petition for review in the Original State Civil Actions were still pending before the Supreme Court of Texas, Plaintiffs filed a new lawsuit in the Northern District of Texas (Case No. 3:12-CV-3707-G-BK) against many of the same defendants sued in the Original State Civil Actions, as well as those Collin County judges, court administrators, and attorneys involved in the Original State Civil Actions (hereinafter "Northern District of Texas Action"). *See Amrhein I*, 2013 WL 1155473, at *14; *Amrhein II*, 2013 WL 1174626, at *1-2.

[2] Plaintiffs named the following entities and persons, alleging each was directly or indirectly involved in the Transaction: (1) Jerry Riechert; (2) Lori Riechert; (3) ReMax North Central Realty Company; (4) ReMax Agent Sally Darnall; (5) ReMax Agent Kelly Calkins; (6) ReMax Agent Lauren Palmer; (7) ReMax Agent/Broker Bill Williams; (8) Republic Title of Texas; (9) Republic Title V.P. Manager Kathi Riddle; (10) Republic Title Kiesha Tolbert; (11) First American Title Insurance Company; (12) Stonebridge Ranch Homeowners Association; (13) RTI/CMA Community Management Associates; (14) Newland Communities; (15) Hunter Kramer; (16) Thomas Murphy & Murphy Home Group. Notably, and as discussed *infra*, Plaintiffs name defendants Kathi Riddle, Kiesha Tolbert, and Hunter Kramer, for the first time in the present case; Plaintiffs have, on the other hand, previously sued the thirteen other listed defendants in the Northern District of Texas for the same or similar claims.

Plaintiffs alleged substantially the same claims in the Northern District of Texas Action as they had in the Original State Civil Actions, with the addition of allegations of misconduct and bias against various Collin County Court employees, Collin County Court judges and their staff, and attorneys. *See id.* at *1-2. A number of defendants were served[3] in the Northern District of Texas Action and filed Motions to Dismiss Plaintiffs' claims. *See Amrhein I*, 2013 WL 1155473, at *1. The Northern District granted each of these served defendants' motions to dismiss on March 21, 2013, and ordered that Plaintiffs' claims against each of those defendants be dismissed with prejudice for failure to state a claim. *Amrhein I Order*, 2013 WL 1174571, at *1; *see Amrhein I*, 2013 WL 1155473, at *15. In addition, Plaintiffs' claims as to all Texas state legislature members and/or senators, as well as those against the members of the Supreme Court of Texas, were dismissed without prejudice because, as the Northern District found, Plaintiffs showed no good cause for failing to timely and correctly serve process on those defendants. *Amrhein II Order*, 2013 WL 1174571, at *1; *see Amrhein II*, 2013 WL 1174626, *2.[4] The Northern District then denied each of Plaintiffs' remaining motions and imposed the Pre-filing

[3] Plaintiffs served the following sets of defendants (each set filed a separate motion to dismiss) in the Northern District of Texas Action: (1) the State Bar of Texas; (2) Judges Richard D. Davis, Richard Mays, Chris Oldner, John Ovard, John Roach, and Jill Willis; (3) ReMax North Central Realty, Sally Darnall, Lauren Palmer, Kelly Calkins, Bill J. Williams, the law firm of Williams, Newsom, Terry & Newsom, P.C., and attorney J. Kent Newsom; (4) Barry Fanning, Fanning Harper & Martinson PC, Jerry Riechert, and Lori Riechert; (5) Richard Abernathy, Newland Communities, and Abernathy, Roeder, Boyd & Joplin; (6) Collin County Central Appraisal District; (7) City of McKinney/McKinney City Counsel; (8) Greg Abbott, Hope Andrade, Court of Appeals Fifth District of Texas at Dallas, Eleanor Kitzman, Rick Perry, State of Texas, Texas Department of Insurance, Texas Judicial Commission (on misconduct), and Texas Real Estate Commission; (9) Bigger, Beasley, Earl, Hightower PC, First American Title Insurance Company, Rick Hightower, and Republic Title of Texas; (10) Linda Risinger and Law Office of Linda Risinger; (11) Collin County Administrative Court, Collin County District Attorneys' Office, Collin County Texas, and Collin County Clerk Andrea Stoh Thompson; (12) Dawn Holiday, RTI Community Management Associates, Inc., Roberts, Markel, Weinberg PC, and Stonebridge Ranch Homeowners Association; (13) Bush, Rudnicki & Shelton PC, Thomas Murphy, Murphy Home Group, and James Rudnicki; (14) AHI; and (15) attorney Carl David Adams and The Law Office of Carl David Adams.

[4] The Northern District noted in *Amrhein I* that "[s]everal defendants ha[d] not entered an appearance, namely (1) The Texas Legislature, (2) the Texas Supreme Court, (3) Clifford Weinstein, (4) the Law Office of Clifford Weinstein & Associates, and (5) Roeder, Boyd & Joplin, P.C. 2013 WL 1155473, at *1 n.2. Though that Court expressly disposed of Plaintiffs' claims regarding the Texas legislature and Supreme Court, it did not specifically address Plaintiffs' claims against Clifford Weinstein, the Law Office of Clifford Weinstein & Associates, or Roeder, Boyd & Joplin, P.C. *See* Docket in Case No. 3:12-CV-03707-G-BK. The Fifth Circuit considered Plaintiffs' claims against Clifford Weinstein and the Law Office of Clifford Weinstein on appeal. *See* Docket in Case No. 13-10450.

Injunction on Ms. Amrhein for her repeated, frivolous court filings. *Amrhein I Order*, 2013 WL 1174571, *1; *see Amrhein I*, 2013 WL 1155473, at *13-14 (explaining need for sanctions and recommending pre-filing injunction). Plaintiffs appealed the Northern District's ruling unsuccessfully. *Amrhein v. Reichert*, No. 13-10450 (5th Cir. 2015), *cert. denied*, 135 S. Ct. 1479 (2015). Following their unsuccessful appeal, Plaintiffs filed the instant suit in the Eastern District of Texas.

LEGAL STANDARD

A district court has authority to dismiss *sua sponte* a complaint filed *in forma pauperis* if the court finds that the complaint filed "[1] is frivolous or malicious; [2] fails to state a claim on which relief may be granted; or [3] seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see Potts v. Texas*, 354 F. App'x 70, 71 (5th Cir. 2009) (per curiam) ("The district court shall dismiss a case filed IFP at any time if the complaint is frivolous or malicious.") (citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). A court, however, must liberally construe a *pro se* litigant's pleadings in analyzing those pleadings under Section 1915(e). *See Flanagan v. LaGrone*, No. 9:16-CV-00059-MHS, 2016 WL 4163557, at *1 (E.D. Tex. July 6, 2016) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)); *see also Watson v. Ault*, 525 F.2d 886, 891 (5th Cir. 1976) (explaining that, in the *pro se* context, *Haines v. Kerner* modifies the typical Section 1915(e) standard of review for legal sufficiency).

Under Section 1915(e)(2)(B)(i), courts must evaluate a complaint filed *in forma pauperis* for frivolousness or maliciousness. Cases "duplicative of a pending or previous lawsuit" are malicious. *Potts*, 354 F. App'x at 71 (citing *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993) and *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988)); *see also McBarron v. Fed. Bureau of Prisons*, 332 F. App'x 961, 963-64 (5th Cir. 2009) (per curiam) ("The majority of . . . claims

involved the same general series of events, facts, and conditions that were at issue in an earlier . . . proceeding[] and therefore constituted '[r]epetitious litigation of virtually identical causes of action' that were properly dismissed as malicious."). This is so even where the plaintiff "raise[s] new claims," so long as those claims "grow out of the same allegations" as were presented in the prior or pending suit(s). *Id.*; *see also Potts v. Texas*, No. 1:07-CV-632, 2008 WL 4525007, at *3 (E.D. Tex. Sept. 26, 2008) ("While there may be some new defendants and claims buried within the original and two amended complaints filed in this district, the new factual allegations are the same 'clearly baseless,' 'fanciful,' . . . types of claims that were dismissed as frivolous in [plaintiff's previous cases]."). A court may dismiss a case either as malicious or as frivolous for being duplicative. *See Silva v. Stickney*, No. 3:03-cv-2279-D, 2005 WL 2445433, at *4 (N.D. Tex. Sept. 30, 2005) ("Courts may appropriately dismiss an *in forma pauperis* action as frivolous, when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff.'" (quoting *Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989))); *see also Yarborough v. Sheriff, Tarrant Cty.*, Civil Action No. 4:11-cv-207-Y, 2011 WL 4736302, at *1-2 (N.D. Tex, Oct. 5, 2011) (Claims presented that "are duplicative of claims already asserted and dismissed in [a] previous case . . . may be dismissed as frivolous or malicious[,]" or, "[a]lternatively, [because they] are . . . barred by the doctrine of *res judicata*[.]").

Further, claims without an arguable basis in law or fact are also frivolous. *See, e.g.*, *Brewster v. Dretke*, 587 F.3d 764, 767 (5th Cir. 2009); *see also Moore v. Mabus*, 976 F.2d 268, 270 (5th Cir. 1992) (distinguishing factual and legal frivolousness). A complaint lacks an arguable basis in law where the complaint "is grounded upon an untenable, discredited, or indisputably meritless legal theory, including alleged violations of a legal interest that clearly

does not exist." *Brown v. Allen*, No. 3:16-cv-214-N-BN, 2016 WL 2855581, at *2 (N.D. Tex. Apr. 25, 2016) (citing *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989)); *see also Booker v. Koonce*, 2 F.3d 114, 116 (5th Cir. 1993) (emphasizing that the claim must truly lack merit, such as where the defendant has immunity to suit). In examining claims for legal frivolousness, courts may reject wholly conclusory claims, *Bilbrew v. Johnson*, 239 F. App'x 49, 50 (5th Cir. 2007), or those that fail arguably to comply with the prescribed pleading standard requiring a short and plain statement demonstrating entitlement to relief, *Harris v. U.S. Dep't of Justice*, 680 F.2d 1109, 1110 (5th Cir. 1982) (per curiam). In like manner, when screening for factual frivolousness a court need not "accept without question the truth of the plaintiff's allegations[,]" even where the allegations "cannot be rebutted by judicially noticeable facts." *Denton v. Hernandez*, 504 U.S. 25, 32 (1992). Instead, if the complaint's "factual contentions are clearly baseless"—such as "claims describing fantastic or delusional scenarios" or situations that are "wholly incredible"—the court may *sua sponte* dismiss. *Id.* (internal quotations omitted).

A court also must determine whether any claims not deemed frivolous or malicious "fail to state a claim on which relief may be granted" or else "seek[] monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii). The immunity inquiry generally folds into the frivolousness analysis. *Cf. Booker*, 2 F.3d at 116 ("A claim against a defendant who is immune from suit is frivolous because it is based upon an indisputably meritless legal theory."). But a defendant's immunity acts as an independent basis for Section 1915(e) dismissal where a plaintiff seeks monetary damages from such defendant. *See Krueger v. Reimer*, 66 F.3d 75, 76-77 (5th Cir. 1995) (per curiam); *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994) (per curiam). Likewise, the plaintiff's failure to state a claim may alone serve as a basis for dismissal. 28 U.S.C. § 1915(e)(2)(B)(ii); *Pleasant v. Sinz*, No. 9:15-CV-00166-MHS,

2016 WL 4613359, at *2 (E.D. Tex. Aug. 5, 2016). In determining whether a complaint fails to state a claim on which relief may be granted, and in contrast to the frivolousness analysis, a court must "accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205-06 (5th Cir. 2007). The complaint must contain facts sufficient to establish plausible, rather than merely conceivable, claims to relief in order to survive such scrutiny. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Claims are "facial[ly] plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged[,]" i.e., "more than a sheer possibility that a defendant acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). By contrast, claims are "implausible on [their] face when 'the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'" *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 796 (5th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 679).

PRE-FILING INJUNCTION

The Court notes initially that Ms. Amrhein has violated the Pre-Filing Injunction entered by the Northern District of Texas in filing this lawsuit. *See Amrhein I Order*, 2013 WL 1174571, at *1. By Order of the Northern District of Texas, Ms. Amrhein is required to file a Motion for Leave prior to filing any lawsuit in any federal court, attaching the following: (1) the proposed complaint; (2) the *Amrhein I* opinion, (3) the *Amrhein I Order*, and (4) the judgments in *Amrhein I* and *Amrhein II*. *See id.* Although Plaintiffs reference the Original State Civil Actions and prior Northern District Action in the Third Amended Complaint, Plaintiffs neglected to file the requisite motion for leave (or any of the required attachments) prior to filing the instant suit. Plaintiffs' failure to comply with the Order of the Northern District of Texas alone is sufficient to

justify dismissal of Plaintiffs' live Complaint, the Third Amended Complaint. *See, e.g.*, *Potts*, 354 F. App'x at 71 ("A district court may bar a vexatious litigant from filing future . . . complaints unless she seeks the prior approval of a district or magistrate judge.") (citing *Murphy v. Collins*, 26 F.3d 541, 544 (5th Cir. 1994)).

ANALYSIS

Plaintiffs have named over one hundred twenty defendants. For purposes of clarity herein, the Court has grouped the defendants into three groups as follows: (1) the Northern District of Texas Defendants,[5] (2) the New Transaction Defendants,[6] and (3) the Eastern District of Texas Defendants.[7] To the extent the Court has inadvertently omitted any named defendant in

[5] In the Northern District of Texas Action, Plaintiffs named the following entities and persons, alleging each was directly or indirectly involved in the Transaction or engaged in some judicial misconduct or bias in adjudicating or litigating the Original State Civil Actions: State Bar of Texas; Judge Richard D. Davis; Judge Richard Mays; Judge Chris Oldner; Judge John Ovard; Judge John Roach; Judge Jill Willis; ReMax North Central Realty; Sally Darnall; Lauren Palmer; Kelly Calkins; Bill J. Williams; Newsom, Terry & Newsom, P.C.; J. Kent Newsom; Barry Fanning; Fanning Harper & Martinson PC; Jerry Riechert; Lori Riechert; Richard Abernathy; Newland Communities; Abernathy, Roeder, Boyd & Joplin/Hulett; Collin County Central Appraisal District; City of McKinney; McKinney City Counsel; Greg Abbott; Hope Andrade; Court of Appeals Fifth District of Texas at Dallas; Eleanor Kitzman; Rick Perry; State of Texas; Texas Department of Insurance; Texas Judicial Commission (on misconduct); Texas Real Estate Commission; Bigger, Beasley, Earl, Hightower PC; First American Title Insurance Company; Rick Hightower; Republic Title of Texas; Law Office of Linda Risinger; Linda Risinger; Collin County Administrative Court; Collin County District Attorneys' Office; Collin County Texas; Collin County Clerk Andrea Stoh Thompson; Dawn Holiday; RTI Community Management Associates, Inc.; Roberts, Markel, Weinberg PC; Stonebridge Ranch Homeowners Association; Bush, Rudnicki & Shelton PC; Thomas Murphy; Murphy Home Group; James Rudnicki; Carl David Adams; and the Law Office of Carl David Adams. These defendants are hereinafter and collectively referred to as "the Northern District of Texas Defendants." Plaintiffs already have pursued claims against each of these defendants in the Northern District of Texas Action that have previously been dismissed.

[6] Plaintiffs name the following entities and persons in their Third Amended Complaint, alleging that each was either directly or indirectly involved in the Transaction or engaged in judicial misconduct or acted in a biased manner in adjudicating or litigating the Original State Civil Actions: Kathi Riddle (Republic Title); Kiesha Tolbert (Republic Title); Hunter Kramer (Republic Title); Judge Weldon Copeland (Probate Court); Probate Court; Judge Keith Self; Attorney Ross Wells; Law Office of Clifford Weinstein; Weinstein & Associates; Clifford Weinstein Estate; Former District Attorney John Roach, Sr.; Current District Attorney Greg Willis; Texas Department of Insurance; Elenor Kitzman (Texas Insurance Commission); David Mattox (Texas Insurance Commission); Ken Maun (Central Appraisal); Brian Loughmiller (McKinney Mayor); City of McKinney Code Enforcement; Collin County McKinney Bldg. Inspection and Development Services; Collin County District Clerk Yoon Kim; Collin County Texas Clerk Stacy Kemp; Fifth District Court of Appeals Clerks Lyle W. Cayce, Claudia McCoy, and Lisa Matz; the Texas Legislative Council; Roberts, Markel, Weinberg, Butler, Haily P.C. (attorneys and law firm); Judge Mary Murphy (First Administrative Regional Office); and Bill Bilyeu (Collin County Administrative Courts). These defendants are hereinafter and collectively referred to as "the New Transaction Defendants." Plaintiffs raise claims against each of these defendants related to the underlying Transaction and do so for the first time in the present case.

[7] Plaintiffs also name the following entities and persons in their Third Amended Complaint, alleging that each was either directly or indirectly involved in and acting unlawfully with regard to the Northern District of Texas Action:

the lists included in the margin, the Court clarifies that this Report and Recommendation addresses *all* named defendants and *all* claims raised by Plaintiffs in their Third Amended Complaint.

I. Northern District of Texas Defendants and New Transaction Defendants: Plaintiffs' Suit is Duplicative of the Northern District of Texas Action and the Original State Civil Actions

Turning first to the Northern District of Texas Defendants and the New Transaction Defendants, Plaintiffs raise the same or substantially similar claims in this case against these Defendants (or those similarly situated) as Plaintiffs raised in the Northern District of Texas Action [*compare* Dkt. 126, *with Amrhein I*, 2013 WL 1155473, at *1-2]. Plaintiffs' claims before this Court duplicate those claims Plaintiffs raised before the Northern District of Texas and are, therefore, subject to dismissal under Section 1915(e) as malicious and/or frivolous. The Northern District of Texas summarized the claims Plaintiffs raised before that Court as follows:

> In September 2012, the *pro se* Plaintiffs sued 59 defendants for (1) violating 42 U.S.C. § 1983; (2) discriminating against Plaintiffs based on their age and

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Texas Supreme Court; Justices as Elected Officials of Texas Supreme Court; Attorney Susan Farris; Attorney Cynthia Hamilton; Matthews, Shiels, Pearce, Knott, Eden & Davis, L.L.P.; Attorney Robert Davis; Attorney Michael Patterson; Attorney Bruce Campbell; Campbell & Associates; Gay, McCall, Issacks; Attorney Lewis Issacks; Clerk of Court Karen Mitchell (Northern District); United States Northern District Court; Judge A. Joe Fish; U.S. Magistrate Judge Renee Toliver; Judge Jorge Solis; United States Court of Appeals Fifth Circuit; Judge Edward C. Prado; Judge Priscilla Owen; Judge James Graves, Jr.; Chief Judge Carl E. Stewart; Shelly Saltzman (Fifth Circuit); United States Supreme Court & Justices; Justice Sonia Maria Sotomayor; Justice Stephen Gerald Breyer; Justice Samuel Anthony Alito, Jr.; Justice Elena Kagan; Justice Clarence Thomas; Justice Antonin Gregory Scalia (Deceased); Justice Anthony McLeod Kennedy; Justice Ruth Joan Bader Ginsburg; Chief Justice John G. Roberts; Clerk Advisor Jacob C. Travers; Supreme Court Clerks Scott S. Harris and James Atkinson; United States of America; President Barack Hussein Obama; Vice President Joseph Biden; United States Solicitor General Donald B. Verilli, Jr.; United States Attorney General Loretta Elizabeth Lynch; United States Department of Justice; U.S. Attorney's Office for the Northern District of Texas; John R. Parker (Northern District); Malcolm Bales (U.S. Attorney's Office); Federal Bureau of Investigation; FBI Director James B. Comey; United States Senate Judiciary Committee; Judiciary Senate Chairman Charles E. "Chuck" Grassley; United States House Judiciary Committee; Judiciary House Chairman Robert Bob Goodlatte; Ted Cruz (U.S. Senator and Senate Judicial Chairman); John Cornyn (U.S. Senator and Senate Judicial Committee); United States Senate (114th Congress); United States House (114th Congress); Administrative Office of United States Courts; Office of General Counsel; Texas Office of Court Administration; Dan Patrick (Texas Lt. Governor); Ken Paxton (Texas Attorney General); Texas Secretary of State; Carlos H. Casos (Texas Secretary of State); Texas Senate; and Texas Senate Members. These defendants are hereinafter and collectively referred to as "the Eastern District of Texas Defendants." Plaintiffs raise claims against each of these defendants that are in some manner distinguishable from Plaintiffs' claims against the New Transaction Defendants and that are raised for the first time here.

> disabilities; and (3) violating various provisions of the Texas Constitution.1 (Doc. 3 at 3–4, 18, 58, 71). Plaintiffs also raised state law claims, such as fraud and negligence, against several defendants. *Id.* at 26–40, 54–58. The lawsuit stems from a May 2007 real estate transaction during which the Plaintiffs, who are father and daughter, purchased a house from Defendants Jerry and Lori Riechert. Id. at 20, 26–30. Unhappy with their purchase due to purported defects with the home, Plaintiffs have sued the Riecherts, as well as various other parties involved either directly or tangentially in the transaction. Those Defendants include (1) the homeowners' association, community management company, and home developer (Stonebridge Ranch Homeowners Association, RTI/CMA Management Company, and Newland Communities); (2) the realty company and realtors (Remax North Central, Sally Darnall, Lauren Palmer, Kelly Calkins, and Bill Williams); (3) the home inspector (AHI and Aaron D. Miller); two title insurance companies (Republic Title of Texas and First American Title Insurance Company); and the home builder (Thomas Murphy and Murphy Home Group). *Id.* at 8–9, 20, 23–40.
>
> Plaintiffs also have sued numerous Texas state court judges, courts, the Collin County District Clerk, the City of McKinney and City Counsel, the State of Texas, the Collin County District Attorneys' Office, the Collin County Central Appraisal District, the Texas Real Estate Commission, the Texas Judicial Commission, the Texas Department of Insurance and one of its commissioners, the entire Texas state legislature, the Supreme Court of Texas, Governor Rick Perry, the Texas Attorney General, Texas Secretary of State Hope Andrade, and sundry private counsel, alleging that all were involved in the real estate transaction at issue. *Id.* at 9–16, 22–23, 41–68. Upon review of Plaintiffs' complaint, however, it is apparent that these latter Defendants are being sued for various actions they are alleged to have taken in a number of state court lawsuits that Plaintiffs filed subsequent to their purchase of the home.

Amrhein I, 2013 WL 1155473, at *1. The Northern District found Plaintiffs' claims against each of the Northern District of Texas Defendants frivolous and admonished Plaintiffs for their "rambling and redundant" filings. *Id.* at *2, *12-14.

In like manner, here, Plaintiffs state their claims before this Court over the course of nearly thirty single-spaced pages, alleging numerous violations by the Northern District of Texas Defendants and the New Transaction Defendants of various state and federal statutory and constitutional provisions, such as the "Bill of Rights," "RICO," the "Texas Constitution[,]" and

42 U.S.C. § 1983, among many others[8] [Dkt. 126 at 10-38]. Plaintiffs sue every Northern District of Texas Defendant and every New Transaction Defendant for these violations individually and under the theory of *respondeat superior*. *Id.* at 10. The allegations against each of the Northern District of Texas Defendants and the New Transaction Defendants relate (often quite tangentially) to the Transaction and subsequent proceedings in the Original State Civil Actions. *Id.* at 10-27. Moreover, Plaintiffs present their allegations in a disorderly and often incoherent manner, *see, e.g.*, *id.* at 13 ("Stonebridge Ranch Homeowners Association, no disclosure of restrictions, rules, dues & for upkeep of surrounding areas . . . grass & weeds over 5 foot fence, animals, infestations, no correct names, violations of codes, . . . false advertising for probable cause . . . ."); *id.* at 29 ("Judge A. Joe Fish, . . . Texas case had no final Orders as refused on Appeal & Supreme Court of Texas cover up, etc; Paid court fees for service, examination of evidence & "due process for legal remedies; Clerks give false instructions on citations certified mail by disinterested party over age 18[.]"), ultimately summarizing their claims as arising out of "Real Estate 'fraud scams' against disable[d] seniors" and the subsequent judicial proceedings to seek justice for those alleged scams. *Id.* at 10. Plaintiffs' claims in this

[8] In all, Plaintiffs purport to raise claims under twenty-two statutes, nine Texas Constitution provisions, various common law causes of action, and at least eight federal constitutional provisions [Dkt. 126 at 10-38]. Specifically, Plaintiffs allege violations of (or through) the "Bill of Rights, DTPA, Constitutional Tort Doctrine, Canon3(6)(5); invalid Vexatious Litigants against CPRC Chapter 11; Ashcroft v. Iqbal, 129 S Ct. 1937, 1949 (2009); Allcock v. Allcock, 437 N. E. 2d 392 (111 App. 3 Dist. 1982; Krusi v. S.J. Amoroso Construction Co. (2000) 81 Cal App. 4th 995, 999; Stofer v. Shapell Industries, Inc. Superior Court, A139385 Costa County No. MSC 10-00598 (1/15/15); Texas Probate Code 18-A.M.R.S.A. § 704b, Probate § 128A Federal Tort Claim Act, Equal Rights, [Petition] to Redress Grievances, 42 U.S.C. § 1981; 42 U.S.C. § 1983, ADA, [HIPAA], Canon Laws 1 to 8, Restatement Second §§ 281-920; ADA; Williamson v. U.S. Department of Agriculture, 815 F 2d. 369; ACLU Foundation v. Barr, 952 F2d 457, 293 U.S.App. DC 101, (CA DC 1991) . . . Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) . . . Uniform Commercial Code; RICO, 18 USC. 2071-2071, Torts; Equal Treatment; Contract Laws;" the United States Constitutions, amendments 1, 5-9, 11, and 14; the Texas Constitution article V, section 11, and Texas Constitution sections 1, 3a, 13, 15, 19, and 27-29; Federal Rule of Civil Procedural 60(b)(4); "Title VI of Civil Rights Act of 1964, 42 U.S.C. § 2000d"; "Specific Contracts"; "18 USC. Section 4 & 2382"; "28 U.S.C. § 455; . . . 28 U.S.C. § 1449[;] . . . 28 U.S.C. § 47[;] . . . 28 U.S.C. 2106[;] . . . 28 U.S.C. § 2679[;] . . . 28 U.S.C. § 1331[;]" and "gross negligence." *Id.* at 36-38. Plaintiffs also raise such claims as "wrongful death" (of Mr. Balistreri), "bias, prejudice, [and] 'conflict[s] of interest,'" presumably on part of those Defendants connected to Plaintiffs' court proceedings. *Id.* at 38-39.

suit and the legal vehicles through which Plaintiffs attempt to bring them—*respondeat superior*, section 1983, RICO—mirror the claims Plaintiffs raised before the Northern District of Texas. *Compare id.* at 10-38, *with Amrhein I*, 2013 WL 1155473, at *1-2. The Court therefore concludes that Plaintiffs' claims in their Third Amended Complaint merely duplicate the claims raised before—and found frivolous by—the Northern District in the Northern District of Texas Action. *See Amrhein I Order*, 2013 WL 1174571, at *1; *Amrhein I*, 2013 WL 1155473, at *13-15.[9] And in those instances where Plaintiffs raise new claims against either New Transaction Defendants or Northern District of Texas Defendants,[10] those "new factual allegations are the same 'clearly baseless[]' . . . types of claims that were dismissed as frivolous in the [Northern District]." *See Potts*, 2008 WL 425007, at *3 (citing *Neitzke*, 490 U.S. at 325-27). Accordingly, each and every of the claims asserted by Plaintiffs against the Northern District of Texas Defendants and the New Transaction Defendants must be dismissed under Section 1915(e)(2)(B)(i) as frivolous and malicious. *Potts*, 354 F. App'x at 71; *Pittman*, 980 F.2d at 995; *Bailey*, 846 F.2d at 1021.

II. The Eastern District of Texas Defendants

Plaintiffs' Third Amended Complaint also raises claims against approximately fifty-eight new defendants whom Plaintiffs allege were involved with the Northern District of Texas Action

[9] For example, Plaintiffs alleged before the Northern District that Defendant Lori K. Riechert "engage[d] in frauds, cover up & conspiracy" through her involvement in the Transaction, and spins myriad claims off of this allegation [*see* Dkt. 3 at 28-30 in Northern District of Texas Civil Action No. 3:12-cv-03707]. Plaintiffs allege the same "frauds" and "concealment," "cover up, bias, and prejudice" before this Court [*see* Dkt. 126 at 11]. Likewise, Plaintiffs argue here that Defendant Attorney Linda Risinger improperly collected $2,500 from Plaintiffs in connection to the Transaction, "promised to return [that money]," and then failed to do so. *Id.* at 20. The Northern District of Texas has already heard these claims and deemed them frivolous. [Dkt. 3 at 53-54 in Northern District of Texas Civil Action No. 3:12-cv-03707].

[10] Plaintiff alleges before this Court for the first time, but based upon the same facts alleged in the Northern District of Texas Action, Defendant Jerry Riechert's "theft of property & money across state lines" [*compare* Dkt. 126 at 10-11, *with* Dkt. 3 at 26-28 in Northern District of Texas Civil Action No. 3:12-cv-03707], as well as Defendant Judge Richard Mays's violation of "TRCP 18a &18b" [*compare* Dkt. 126 at 14, *with* Dkt. 3 at 52 in Northern District of Texas Civil Action No. 3:12-cv-03707]. The record before this Court contains other such minor additions and/or changes to Plaintiffs' previous allegations. However, each of these new allegations grow out of the allegations previously asserted in the Northern District of Texas Action and/or the Original State Civil Actions.

[Dkt. 126 at 17-38]. Plaintiffs allege therein that each of the Eastern District of Texas Defendants engaged in bias, discrimination, and retaliation, as well as either judicial or attorney misconduct or outright omission and/or failure to act while participating either directly or indirectly in the Northern District of Texas Action. *Id.* at 27-36. These allegations have not previously been asserted, as they arise wholly from the district and appeals proceedings in the Northern District Action. *Id.* Accordingly, the Court screens these claims for "fail[ure] to state a claim on which relief may be granted" or for "seeking monetary relief from a defendant who is immune from such relief[,]" rather than strictly for maliciousness or frivolousness. 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii). The Court further defines the following sub-groups of the Eastern District of Texas Defendants in order to more efficiently analyze Plaintiffs' many claims against the Eastern District of Texas Defendants: (A) Defendant Judges and Courts,[11] (B) Defendant Court Staff and Clerks,[12] (C) Defendant Attorneys and Law Firms,[13] and (D) Government Defendants.[14]

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[11] Plaintiffs name the following entities and persons in their Third Amended Complaint, alleging that each was either directly or indirectly involved in the Northern District of Texas Action in their capacity as judges or as courts: Texas Supreme Court; Justices as Elected Officials of Texas Supreme Court; United States Northern District Court; Judge A. Joe Fish; U.S. Magistrate Judge Renee Toliver; Judge Jorge Solis; United States Court of Appeals Fifth Circuit; Judge Edward C. Prado; Judge Priscilla Owen; Judge James Graves, Jr.; Chief Judge Carl E. Stewart; United States Supreme Court & Justices; Justice Sonia Maria Sotomayor; Justice Stephen Gerald Breyer; Justice Samuel Anthony Alito, Jr.; Justice Elena Kagan; Justice Clarence Thomas; Justice Antonin Gregory Scalia (Deceased); Justice Anthony McLeod Kennedy; Justice Ruth Joan Bader Ginsburg; and Chief Justice John G. Roberts. These defendants are hereinafter and collectively referred to as "Defendant Judges and Courts."

[12] Plaintiffs name the following entities and persons in their Third Amended Complaint, alleging that each was either directly or indirectly involved in and acting unlawfully with regard to the Northern District of Texas Action: Clerk of Court Karen Mitchell (Northern District); Shelly Saltzman (Fifth Circuit); Clerk Advisor Jacob C. Travers; and Supreme Court Clerks Scott S. Harris and James Atkinson. These defendants are hereinafter and collectively referred to as "Defendant Court Staff and Clerks."

[13] Plaintiffs name the following entities and persons in their Third Amended Complaint, alleging that each was either directly or indirectly involved in and acting unlawfully with regard to the Northern District of Texas Action: Attorney Susan Farris; Attorney Cynthia Hamilton; Matthews, Shiels, Pearce, Knott, Eden & Davis, L.L.P.; Attorney Robert Davis; Attorney Michael Patterson; Attorney Bruce Campbell; Campbell & Associates; Gay, McCall, Issacks; Attorney Lewis Issacks. These defendants are hereinafter and collectively referred to as "Defendant Attorneys and Law Firms."

[14] Plaintiffs name the following entities and persons in their Third Amended Complaint, alleging that each was either directly or indirectly involved in and acting unlawfully with regard to the Northern District of Texas Action: United States of America; President Barack Hussein Obama; Vice President Joseph Biden; United States Solicitor

A. Defendant Judges and Courts

Plaintiffs allege variously that the Defendant Judges and Courts engaged in "bias, prejudice, retaliation" towards Plaintiffs and that these Defendants were unfamiliar with Plaintiffs' case and refused to recuse themselves in Plaintiffs' proceedings before each [Dkt. 126 at 30; *see, e.g.*, *id.* at 29, 31-33. Plaintiffs' claims against the Defendant Judges and Courts are barred by the doctrine of judicial immunity. Judges generally have absolute immunity for judicial actions taken within the scope of their jurisdiction, which also means judicial officers are generally immune from suits for money damages. *See Stump v. Sparkman*, 435 U.S. 349, 356 (1978); *Mireles v. Waco*, 502 U.S. 9, 9-10 (1991) (per curiam); *Davis v. Tarrant Cty.*, 565 F.3d 214, 221-22 (5th Cir. 2009). "Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction." *Boyd v. Biggers,* 31 F.3d 279, 284 (5th Cir. 1994). "A judge's acts are judicial in nature if they are normally performed by a judge and the parties affected dealt with the judge in his judicial capacity." *Id.* at 285 (internal quotation marks omitted). But "judicial immunity is not overcome by allegations of bad faith or malice," *Mireles,* 502 U.S. at 11, and "[d]isagreeing with a judge's actions does not justify depriving that judge of his or her immunity," *Greenlee v. U.S. Dist. Court,* No. 09–2243–cv–FJG, 2009 WL 1424514, at *2 (D. Kan. May 21, 2009) (citing *Stump*, 435 U.S. at 363).

General Donald B. Verilli, Jr.; United States Attorney General Loretta Elizabeth Lynch; United States Department of Justice; U.S. Attorney's Office for the Northern District of Texas; John R. Parker (Northern District); Malcolm Bales (U.S. Attorney's Office); Federal Bureau of Investigation; FBI Director James B. Comey; United States Senate Judiciary Committee; Judiciary Senate Chairman Charles E. "Chuck" Grassley; United States House Judiciary Committee; Judiciary House Chairman Robert Bob Goodlatte; Ted Cruz (U.S. Senator and Senate Judicial Chairman); John Cornyn (U.S. Senator and Senate Judicial Committee); United States Senate (114th Congress); United States House (114th Congress); Administrative Office of United States Courts; Office of General Counsel; Texas Office of Court Administration; Dan Patrick (Texas Lt. Governor); Ken Paxton (Texas Attorney General); Texas Secretary of State; Carlos H. Casos (Texas Secretary of State); Texas Senate; and Texas Senate Members. These defendants are hereinafter and collectively referred to as "Government Defendants."

Here, Plaintiffs' claims against each of the Defendant Judges and Courts relate to those Defendants' actions as judges; Plaintiffs have not alleged or shown that any of the Defendant Judges took actions outside the scope of his or her work as a judge [Dkt. 126 at 29-33]. By way of example, Plaintiffs allege variously that Judge A. Joe Fish improperly adopted Magistrate Judge Renee Toliver's reports and recommendations in Plaintiffs' case, *id.* at 29, that Magistrate Judge Renee Toliver "engaged in misconduct," *id.* at 30, that Judge Jorge Solis (presumably connected to the case because of his status as "Chief Judge" of the Northern District of Texas) communicated ex parte with Magistrate Judge Renee Toliver, *id.* at 31, that Judges Edward C. Prado and others sitting on the Fifth Circuit Court of Appeals "prevent[ed] discovery of appearance of bias, prejudice, conflicts of interests, [and] retaliation," *id.* at 32, and that the "United States Supreme Court Justices . . . never ruled on [Plaintiffs'] case[,]" *id.*

Each of Plaintiffs' claims against the Defendant Judges allege misconduct in connection with the hearing of Plaintiffs' claims or appeals in the Northern District of Texas Action and/or investigation of complaints of judicial misconduct by other judges. All of these acts fall within the purview of "judicial acts," and are accordingly absolutely barred by the doctrine of judicial immunity. *See Oliver v. Trial Court Judges*, No. 3:15-CV-2962-P-BN, 2015 WL 6438477, at *4-5 (N.D. Tex. Sept. 15, 2015), *rec. adopted*, No. 3:15-CV-2962-P, 2015 WL 6460030 (N.D. Tex. Oct. 21, 2015) (dismissing claims against judges based on judicial immunity). Further, because Plaintiffs' claims against the various state and federal courts (e.g., the United States Court of Appeals for the Fifth Circuit) allege substantially the same claims as against the individual Defendant Judges, such claims against the Courts are also barred by judicial immunity. *See Brown v. Supreme Court of La.*, No. CIV.A. 88-3255, 1988 WL 137486, at *1 (E.D. La. Dec. 19, 1988) (dismissing claims against "Louisiana Supreme Court (and its judges)"

based on judicial immunity). Accordingly, the Court finds each of Plaintiffs' claims against the Defendant Judges and Courts should be dismissed pursuant to Section 1915(e)(2)(B)(ii).

B. Defendant Court Staff and Clerks

Plaintiffs' claims against the Defendant Court Staff and Clerks are likewise barred by immunity. The Fifth Circuit has held that court clerks "have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's discretion." *Clay v. Allen*, 242 F.3d 679, 682 (5th Cir. 2001) (per curiam); *see Kasterner v. Lawrence,* 390 F. App'x 311, 315 (5th Cir. 2010). The present case clearly is apposite.

Plaintiffs' claims against the Defendant Court Staff and Clerks generally allege that the various clerks filed certain motions incorrectly, refused to file Plaintiffs' documents (or misplaced them), removed Mr. Balistreri from the court filings, charged Plaintiffs court costs and filing fees, and failed to provide notice of orders [*see* Dkt. 126 at 20, 24-25]. Plaintiffs' claims against the Defendant Court Staff and Clerks seek to attribute every loss or negative action in the Northern District of Texas Action to the federal clerk and/or office for the court in which the action was taken. *Id.* To the extent the actions or harms alleged resulted from a judicial order or court ruling (e.g., dismissal of the lawsuit, denial of IFP status, or requirement to pay filing fees), the Defendant Court Staff and Clerks are protected by absolute immunity. *Clay*, 242 F.3d at 682. Accordingly, the Court finds that each of Plaintiffs' claims against the Defendant Court Staff and Clerks should be dismissed pursuant to Section 1915(e)(2)(B)(ii).

C. Defendant Attorneys and Law Firms

Plaintiffs also assert various allegations against each and every one of the attorneys involved in the Northern District of Texas Action [Dkt. 126 at 18-20]. These claims allege generally that each of the Defendant Attorneys and Law Firms engaged in "cover up[s],"

"obstructed judicial procedures," engaged in a conspiracy with other attorneys, judges, and agents, and engaged in fraud and other unlawful acts. *Id.* Plaintiffs' claims against each of the Defendant Attorneys and Law Firms relate to the Attorney Defendants' conduct while representing one or more parties in the Original State Civil Actions and/or Northern District of Texas Action [*see* Dkt. 126 at 27-29]. Plaintiffs' claims are each raised against an attorney who represented some other party: Plaintiffs proceeded *pro se* throughout the Northern District of Texas Action. *Id.*

In Texas, "attorney immunity"—an attorney's defense to claims by non-clients in association with the attorney's actions in representing a client in litigation—is properly characterized as a true immunity from suit, not as a defense to liability. *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346 (5th Cir. 2016); *Sorey v. Kellett*, 849 F.2d 960, 962 (5th Cir. 1988); *see also Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481-84 (Tex. 2015). The doctrine "'stem[s] from the broad declaration . . . that "attorneys are authorized to practice their profession, to advise their clients and interpose any defense or supposed defense, without making themselves liable for damages."'" *Troice*, 816 F.3d at 346 (quoting *Cantey Hanger*, 467 S.W.3d at 481-84 (Tex. 2015)). This doctrine ensures attorneys advocate zealously—"loyal[ly], faithful[ly], and aggressive[ly]"—for their clients. *Id.* (internal quotations omitted). Attorney immunity is necessary "to avoid the inevitable conflict that would arise if [an attorney] were 'forced constantly to balance his own potential exposure against his client's best interest.'" *Id.* at 483 (quoting *Alpert v. Crain, Caton & James, PC*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). As the Texas Supreme Court recently clarified, fraud is no exception to attorney immunity. *Cantey Hanger*, 467 S.W.3d at 483-84.

Here, as noted *supra*, Plaintiffs raise claims against Defendant Attorneys based solely on action those Defendants took while representing *other parties* [*see, e.g.*, Dkt. 126 at 29 ("Law Firm & Attorneys with *clients as city officials* . . . ." (emphasis added))]. Because Plaintiffs allege acts committed solely during these attorneys' representation of their respective clients, Texas's doctrine of attorney immunity absolutely bars Plaintiffs' claims. *Troice*, 816 F.3d at 345-49 (reversing and remanding for entry of judgment in favor of attorneys based on attorney immunity, where plaintiff asserted claims against counsel for another party in a court action). Accordingly, the Court finds that each of Plaintiffs' claims against the Defendant Attorneys and Law Firms should be dismissed pursuant to Section 1915(e)(2)(B)(ii).

D. Government Defendants

As noted *supra*, a complaint must contain facts sufficient to establish plausible claims to relief in order to survive under the federal pleading standards. *Twombly*, 550 U.S. at 555, 570; FED. R. CIV. P. 8. When determining whether a complaint states a claim upon which relief may be granted, a court must (1) identify the complaint's conclusory allegations and disregard them, then (2) evaluate the remaining allegations for plausibility. *Iqbal*, 556 U.S. at 678-80.

In the present case, the Plaintiffs' Third Amended Complaint does not proceed past the first step. The Court provides the following excerpt from Plaintiffs' Third Amended Complaint as an example of the types of conclusory, disjointed allegations Plaintiffs raise therein related to the Government Defendants:

> **96. Judicial Chairman & Senator Ted Cruz, et al;**
> Sent 2 detailed letters of lawsuit & "no response" as judicial chairman & lawmaker, for broken promises, breached oath & office, meaningless laws, judges legislating from the bench, while using our tax dollars to cause our loss, harms, injury & Balistreri's death; We have the right to sue for our Constitutional Rights & all frauds as no one is above the law. Corruption, abuse of oath & office, "favors for friends," frauds & no Constitution Rights! Senior disabled Balistreri died wrongful death with no fairness & no justice! (Shameful)

. . .

> **98. United States Senate, (114th Congress,) et al;**
> Sent 350 letters to senators about this case, received 4 responses back that claimed to make contact once case is over because we can't get involved in litigation as paid;
> It appears are laws are meaningless, used to control litigants & no substance or principle; Corruption, abuse of oath & office, "favors for friends," frauds & no Constitution Rights! Senior disabled Balistreri died wrongful death with no fairness & no justice! (Shameful)

[Dkt. 126 at 26]. This representative sample of Plaintiffs' allegations against the Government Defendants demonstrates that Plaintiffs' "claims" do not assert any legal claim; Plaintiffs cite no statute, state or federal, that would permit Plaintiffs to sue any third party, let alone a government entity, for failure to respond to a letter from a citizen. *Id.*

Moreover, to the extent that Plaintiffs included parties as defendants to provide "required notice of Petition Right to Sue United States and details of frauds, laws, etc. . . . ," [*see, e.g.*, Dkt. 126 at 25 (naming the United States Attorney's Office for Northern District of Texas, FBI Director James B. Comey Deputy, et. al, as defendants for this purpose)], such claims are misplaced. Plaintiffs may, in some cases, be required to provide notice of a lawsuit to particular government officials, via service of process. *See* FED. R. CIV. P. 4(i). However, such officials do not thereby become appropriate parties to the lawsuit. Accordingly, the Court finds that each of Plaintiffs' claims against the Defendant Attorneys and Law Firms should similarly be dismissed pursuant to Section 1915(e)(2)(B)(ii).

CONCLUSION AND RECOMMENDATION

The Court finds first that Plaintiffs filed the present lawsuit in violation of the Northern District's Pre-filing Injunction Order. The Court further finds that each of Plaintiffs' claims against the Northern District of Texas Defendants and New Transaction Defendants are frivolous

and malicious, and should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Finally, the Court finds that each of Plaintiffs' claims against the Eastern District of Texas Defendants should be dismissed for failure to state a claim upon which relief may be granted, and should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Based on the foregoing, the Court recommends that Plaintiffs' Third Amended Complaint and each and every of the claims therein [Dkt. 126] be **DISMISSED WITH PREJUDICE.**

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). **SIGNED this 7th day of October, 2016.**

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

EXHIBIT G-2

Neutral
As of: December 12, 2017 10:03 PM Z

Balistreri-Amrhein v. Verrilli

United States District Court for the Eastern District of Texas, Sherman Division

February 24, 2017, Decided; February 24, 2017, Filed

Civil Action No. 4:16-CV-112

Reporter
2017 U.S. Dist. LEXIS 25914 *; 2017 WL 726919

DARLENE C. BALISTRERI-AMRHEIN, ANTHONY J. BALISTRERI, DECEASED v. DONALD VERRILLI, JR., UNITED STATES SOLICITER GENERAL, ET AL

Prior History: *Balistreri-Amrhein v. Verrilli, 2016 U.S. Dist. LEXIS 184511 (E.D. Tex., Oct. 7, 2016)*

Counsel: [*1] Darlene C Balistreri-Amrhein, Plaintiff, Pro se, McKinney, TX.

Anthony J Balistreri, Deceased, Plaintiff, Pro se, McKinney, TX.

Judges: AMOS L. MAZZANT, UNITED STATES DISTRICT JUDGE. Judge Nowak.

Opinion by: AMOS L. MAZZANT

Opinion

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to *28 U.S.C. § 636*. On October 7, 2016, the report of the Magistrate Judge (Dkt. #128) was entered containing proposed findings of fact and recommendations that Plaintiffs Darlene C. Balistreri-Amrhein's ("Ms. Amrhein") and Anthony Balistreri's ("Mr. Balistreri") (collectively "Plaintiffs") Third Amended Complaint be dismissed. Having received the report of the Magistrate Judge (Dkt. #128), having considered each of Plaintiffs' objections (Dkt. #132), and having conducted a de novo review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Court hereby adopts the Magistrate Judge's report (Dkt. #128) as the findings and conclusions of the Court.

BACKGROUND

The underlying facts are set out in further detail [*2] by the Magistrate Judge and need not be repeated here in their entirety (*see* Dkt. #128). Accordingly, the Court sets forth herein only those facts pertinent to Plaintiffs' objections.

Plaintiffs filed suit on May 19, 2008, in Texas state court in Collin County (Case Nos. 296-01145-2008, 296-04897, 429-001145-2008) alleging Jerry and Lori Reichert, among others, breached a contract for the sale of real estate and engaged in fraud and other wrongdoing in relation to the sale and related contract (the "Transaction") (Dkt. #126 at 1-4). Plaintiffs lost in the trial courts and prosecuted appeals thereafter (Case No. 05-09-01377) (these proceedings are hereinafter and collectively referenced as the "Original State Civil Actions") (Dkt. #126 at 5). The Texas Supreme Court denied Plaintiffs' petition for review in 2012, terminating the Original State Civil Actions.

Meanwhile, and beginning in September 2012, Plaintiffs filed a new lawsuit in the Northern District of Texas (N.D. Tex. Case No. 3:12-CV-3707-G-BK) asserting many of the same claims against many of the same defendants as had Plaintiffs in the Original State Civil Actions; Plaintiffs also alleged misconduct and bias on the part of [*3] various Collin County judges, court administrators,

and attorneys allegedly involved in the Original State Civil Actions (the proceedings before the Northern District of Texas are hereinafter and collectively referenced as the "Northern District of Texas Action"). *See Amrhein v. Reichert (Amrhein I), No. 3:12-CV-3707-G-BK, 2013 U.S. Dist. LEXIS 40343, 2013 WL 1155473, at *13-14 (N.D. Tex. Feb. 1, 2013), report and recommendation adopted Amrhein v. Reichert (Amrhein I Order), 2013 U.S. Dist. LEXIS 39228, 2013 WL 1174571 (N.D. Tex. Mar. 21, 2013)* (dismissing with prejudice all of Plaintiffs' claims against served defendants); *Amrhein v. Reichert (Amrhein II), No. 3:12-CV-3707-G-BK, 2013 U.S. Dist. LEXIS 40333, 2013 WL 1174626, at *1-2 (N.D. Tex. Feb. 15, 2013), report and recommendation adopted Amrhein v. Reichert (Amrhein II Order), 2013 U.S. Dist. LEXIS 39229, 2013 WL 1181273 (N.D. Tex. Mar. 21, 2013)* (dismissing without prejudice all of Plaintiffs' claims against unserved defendants). In dismissing Plaintiffs' claims, the Northern District also imposed a Pre-Filing Injunction on Ms. Amrhein for her repeated, frivolous court filings:

> **Darlene Amrhein is prohibited from filing any new civil action in any United States district court** unless she first files a motion requesting leave of court to do so and attaches thereto copies of (1) her proposed complaint, (2) the magistrate judge's findings, conclusions and recommendation in this case, (3) this court's order accepting the findings, conclusions and recommendation of the United States Magistrate Judge, and (4) the judgment [*4] in this case.

*Amrhein I Order, 2013 U.S. Dist. LEXIS 39228, 2013 WL 1174571, at *1; see Amrhein I, 2013 U.S. Dist. LEXIS 40343, 2013 WL 1155473, at *13-14* (explaining need for sanctions and recommending pre-filing injunction). Plaintiffs appealed the Northern District's ruling unsuccessfully. *Amrhein v. Reichert*, No. 13-10450 (5th Cir. 2015), *cert. denied, 135 S. Ct. 1479, 191 L. Ed. 2d 356 (2015).*

Plaintiffs filed the instant lawsuit on February 11, 2016, alleging myriad causes of action against over one hundred and twenty distinct defendants, many of which Plaintiffs already had sued in the Northern District of Texas Action (Dkt. #1; *see* Dkt. #5 (First Amended Complaint); Dkt. #7 (Second Amended Complaint)).[1] On February 11, 2016, Plaintiffs filed a Motion to Proceed *In Forma Pauperis* (Dkt. #3), which the Court granted on February 19, 2016 (Dkt. #4). The Court subsequently ordered Plaintiffs to file a Third Amended Complaint and ordered that service "be withheld pending judicial screening of Plaintiffs' Third Amended Complaint pursuant to *28 U.S.C. § 1915A*" (Dkt. #124). Plaintiffs filed the Third Amended Complaint on March 14, 2016 (Dkt. #126). The Magistrate Judge entered a report and recommendation on October 7, 2016 (Dkt. #128), recommending Plaintiffs' Third Amended Complaint be dismissed with prejudice. On October 25, 2016, Plaintiffs filed Objections to the Magistrate [*5] Judge's report and recommendation (Dkt. #132).

OBJECTIONS

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. *28 U.S.C. § 636(b)(1)(C)*; *Fed. R. Civ. P. 72(b)(2)-(3)*. As a threshold matter, the Court notes Plaintiffs' Objections (vastly in excess of the Court's eight-page limit) take issue with the entirety of the Magistrate Judge's findings and recommendations. Moreover, a number of Plaintiffs' objections are duplicative and repetitive; and after reviewing Plaintiffs' filing under the relaxed pleading standard afforded *pro se* litigants,

---

[1] Reviewing the Magistrate Judge's report and recommendations, the Court finds the Magistrate Judge accurately and thoroughly identifies each of the Defendants Plaintiffs sue in this action. As a result, the Court adopts the Magistrate Judge's identification of the various groups of Defendants (*see* Dkt. #128 at 10-11 & nn. 5-7) and proceeds to evaluate Plaintiffs' Objections with reference to the "Northern District of Texas Defendants," the "New Transaction Defendants," and the "Eastern District of Texas Defendants." To the extent the Court omits inadvertently any named defendant in this action, the Court clarifies that this Memorandum addresses *all* named defendants and *all* claims raised by Plaintiffs in their Third Amended Complaint.

see Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), the Court discerns that Plaintiffs object specifically to the following: (1) the Magistrate Judge's use of *28 U.S.C. § 1915* ("*Section 1915*") (a) to screen Plaintiffs' Third Amended Complaint and recommend dismissal with prejudice of Plaintiffs' claims, (b) to find that Plaintiffs' claims against the Eastern District of Texas Defendants should be dismissed with prejudice, and (c) to find that Plaintiffs' claims against the Northern District of Texas Defendants and New Transaction Defendants should be dismissed with prejudice; and (2) the Magistrate Judge's finding that [*6] Mr. Balistreri's claims should be dismissed.[2]

Plaintiffs object to the Magistrate Judge's screening of Plaintiffs' Third Amended Complaint under *Section 1915* (*e.g.*, Dkt. #132 at 7-8, 12-15, 17-18, 24-30). Primarily, Plaintiffs assert *Section 1915* applies only to prisoners and, accordingly, that the Magistrate Judge inappropriately applied that provision to Plaintiffs, who are not prisoners (Dkt. #132 at 7-8). Plaintiffs contend, as well, that the Magistrate Judge erred in recommending Plaintiffs' claims against each of the groups of Defendants be dismissed with prejudice (Dkt. #132 at 13). Further, Plaintiffs assert, the Magistrate Judge erred in finding (1) Plaintiffs' claims against the Eastern District of Texas Defendants should be dismissed for failure to state a claim upon which relief may be granted and (2) Plaintiffs' claims against the Northern District of Texas Defendants and the New Transaction Defendants are frivolous and malicious (Dkt. #132 at 1-3, 6, 8-27).

A. Application of 1915 and Dismissal with Prejudice Thereunder

District courts have authority under *Section 1915* to dismiss a complaint *sua sponte* where the complaint "[1] is frivolous or malicious; [2] fails to state a claim on which relief may be granted; [*7] or [3] seeks monetary relief against a defendant who is immune from such relief." *28 U.S.C. § 1915(e)(2)(B)*; *see* Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997); Kenechukwu v. Holder, No. 9:15-CV-62, 2016 U.S. Dist. LEXIS 95247, 2016 WL 3961714, at *1-2 (E.D. Tex. June 10, 2016, *report and recommendation adopted*, 2016 U.S. Dist. LEXIS 95064, 2016 WL 3926576 (E.D. Tex. July 21, 2016). A court may dismiss a complaint under this standard "if it lacks an arguable basis in law or fact." Siglar, 112 F.3d at 193; *see* Moore v. Mabus, 976 F.2d 268, 269-70 (5th Cir. 1992) (explaining the distinction between factual and legal frivolousness in *in forma pauperis* complaints). Although courts construe *pro se* filings liberally in this context, *see, e.g.*, Flanagan v. LaGrone, No. 9:16-CV-59-MHS, 2016 U.S. Dist. LEXIS 102633, 2016 WL 4163557, at *1 (E.D. Tex. July 6, 2016), *report and recommendation adopted*, 2016 U.S. Dist. LEXIS 102159, 2016 WL 4140751 (E.D. Tex. Aug. 3, 2016), dismissal is appropriate where the claims have no chance of success, *cf.* Booker v. Koonce, 2 F.3d 114, 115-16 (5th Cir. 1993) (noting dismissal of claims with "some chance" of success is inappropriate at screening stage but affirming dismissal where *pro se* plaintiff's claim "[was] based upon an indisputably meritless legal theory"). Moreover, "[t]he statute applies equally to prisoner and non-prisoner cases." Kenechukwu, 2016 U.S. Dist. LEXIS 95247, 2016 WL 3961714, at *1-2 (citing Newsome v. E.E.O.C., 301 F.3d 227, 231 (5th Cir. 2002) (per curiam) (applying *Section 1915* to non-prisoner *pro se* litigant)); *see, e.g.*, Booker, 2 F.3d at 115 (applying *Section 1915* to non-prisoner, former arrestee who claimed wrongful arrest and affirming dismissal under *Section 1915*); Patel v. United Airlines, 620 F. App'x 352 (5th Cir. 2015) (per curiam) (applying *Section 1915* to non-prisoner *pro se* litigant); James v. Richardson, 344 F. App'x 982, 983 (5th Cir. 2009) (per curiam) ("*Section 1915(e)(2)(B)* requires dismissal of frivolous [*8] IFP actions even if those actions are brought by non-prisoner plaintiffs."); Walters v. Scott, No. H-14-1637, 2014 U.S. Dist. LEXIS 159190, 2014 WL 5878494, at *1 (S.D. Tex. Nov. 11, 2014) ("*Section 1915(e)(2)(B)* applies equally to prisoner and non-prisoner *in forma pauperis*

[2] Because the Court finds Plaintiffs' Third Amended Complaint should be dismissed in its entirety, the Court does not reach Plaintiffs' objection to the Magistrate Judge's finding that Mr. Balistreri's claims should be dismissed for lack of proper representation.

cases."); Sanchez v. Waguespack, No. 09-6130, 2010 U.S. Dist. LEXIS 41553, 2010 WL 1727836, at *2 (E.D. La. Mar. 31, 2010) (same); Hamilton v. Landmark of Richardson, No. 3-02-CV-2681-K, 2002 U.S. Dist. LEXIS 24583, 2003 WL 131722, at *1 n.1 (N.D. Tex. Jan. 8, 2003) (same); Haqq v. Tex. Dep't of Hum. Servs., No. EP-07-CA-0156-FM, 2007 U.S. Dist. LEXIS 50229, 2007 WL 1958611, at *1 (W.D. Tex. June 29, 2007) ("*Section 1915(e)(2)(B)* applies to both prisoner and non-prisoner *in forma pauperis* cases."); *cf.* Haynes v. Scott, 116 F.3d 137, 139-40 (5th Cir. 1997) (interpreting *Section 1915* and determining sections using either or both nouns "persons" and "prisoners" applied to non-prisoners and prisoners, while sections using only noun "prisoner" applied only to prisoners); *28 U.S.C. § 1915(e)(1)-(2)* (using the term "person," not "prisoner"). The Court finds in accord with these authorities that *Section 1915(e)(2)(B)* applies to non-prisoners and prisoners alike.

Further, courts appropriately dismiss claims with prejudice under *Section 1915(e)(2)(B)* in certain circumstances. *See Shabazz v. Franklin, 380 F. Supp. 2d 793, 802 (N.D. Tex. 2005)* (citing Denton v. Hernandez, 504 U.S. 25, 32-33, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992), and Marts v. Hines, 117 F.3d 1504, 1505 (5th Cir. 1997) (en banc)). The Fifth Circuit has held that, when presented with one of the following situations, a court may dismiss an *in forma pauperis* complaint with prejudice: "(1) 'complaints containing claims which, on their face, were subject to an obvious meritorious defense'; (2) when the plaintiff had been 'given an opportunity to expound on the factual [*9] allegations' through a questionnaire or hearing and still 'could not assert a claim with an arguable factual basis'; and (3) 'claims without an arguable basis in law.'" *Shabazz, 380 F. Supp. 2d at 802-03* (noting this includes "'dismissals as frivolous or malicious' under the IFP screening statute[,]" citing Marts, 117 F.3d at 1505, and United States v. Coscarelli, 149 F.3d 342, 343 (5th Cir. 1998)). Plaintiffs' citation to Denton in support of the proposition that the Magistrate Judge inappropriately recommended dismissal with prejudice accordingly is unavailing:

> The rule that the *in limine* dismissals of actions by the district court generally are to be with prejudice particularly fits dismissals under the former *28 U.S.C. § 1915(d)*, now a part of *28 U.S.C. § 1915(e)(2)*. Dismissals under the *in forma pauperis* statute are in a class of their own, acting not as dismissals on the merits but, rather, as denials of in *forma pauperis* status. Typically, but not exclusively, such dismissals may serve as *res judicata* for subsequent *in forma pauperis* filings, but they effect no prejudice to the subsequent filing of a fee-paid complaint making the same allegations. Exceptions included complaints containing claims which, on their face, were subject to an obvious meritorious defense, or instances in which the plaintiff was given an opportunity to expound [*10] on the factual allegations by a *Watson* questionnaire or a *Spears* hearing and could not assert a claim with an arguable factual basis, or claims without an arguable basis in law.
>
> On en banc reconsideration, considering the distinct features of such *in forma pauperis* proceedings, we now hold that dismissals as frivolous or malicious should be deemed to be dismissals with prejudice unless the district court specifically dismisses without prejudice. . . .

Marts, 117 F.3d at 1505-06 (interpreting *Denton*) (footnotes omitted). In light of the Fifth Circuit's clear instruction in *Marts*, the Court finds the Magistrate Judge's recommendations to dismiss with prejudice appropriate.

B. Dismissal of Claims Against Eastern District of Texas Defendants as Frivolous

"A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." Newsome, 301 F.3d at 231-32 (finding dismissal of *pro se* litigant's APA claim appropriate under *Section 1915* because APA accorded litigant no right to sue EEOC given that EEOC had engaged

in no final agency action); *see, e.g.,* Neitzke, 490 U.S. at 327-28 ("Examples . . . [include] claims against which it is clear that the defendants [*11] are immune from suit, ..."); Bilbrew v. Johnson, 239 Fed. Appx. 49, 50 (5th Cir. 2007) (per curiam) (affirming dismissal claim of deliberate medical indifference under *Section 1915* because "wholly conclusional").

Likewise, claims lack an arguable basis in fact where based upon "fantastic or delusional scenarios." Neitzke v. Williams, 490 U.S. 319, 327-28, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989) (*Section 1915* "accords judges . . . the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual allegations are clearly baseless."); Denton, 504 U.S. at 32-33 ("[A] court may dismiss a claim as factually frivolous only if the facts alleged are 'clearly baseless,' . . . a category encompassing allegations that are 'fanciful,' . . . 'fantastic,' . . . and 'delusional[.]'"). Though an "initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighed in favor of the plaintiff[,]" a court should consider "judicially noticeable facts" in determining whether the allegations have any basis in fact. Denton, 504 U.S. at 32. Indeed, a complaint merits dismissal under *Section 1915* where it "appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." Newsome, 301 F.3d at 231 (citing Moore v. Carwell, 168 F.3d 234, 236 (5th Cir. 1999)).

In the present case, the Magistrate Judge considered each of Plaintiffs' allegations with regard to each of the groups of Eastern [*12] District of Texas Defendants[3] and found that each should be dismissed pursuant to *Section 1915(e)(2)(B)(ii)* for failure to state a claim on which relief may be granted (Dkt. #128 at 16-21). In so finding, the Magistrate Judge determined that immunity barred Plaintiffs' claims against each group of Eastern District of Texas Defendants (*see* Dkt. #128 at 16-18 (finding judicial immunity absolutely bars Plaintiffs' claims against the Defendant Judges and Courts), 18 (finding immunity accorded judicial staff when executing court orders or matters of judicial discretion applied to bar Plaintiffs' claims against Defendant Court Staff and Clerks), 18-20 (finding the Defendant Attorneys and Law Firms are immune to Plaintiffs' claims), 20-21 (finding Plaintiffs' allegations against the Government Defendants conclusory and without any basis in law)). After conducting a de novo review of the Third Amended Complaint, the Court finds Plaintiffs' claims against each of the Eastern District of Texas Defendants should be dismissed with prejudice. Plaintiffs' claims against the Defendant Judges and Courts clearly are barred by immunity given that neither the allegations nor the objections demonstrate that any of the Defendant [*13] Judges and Courts "acted in the 'clear absence of all jurisdiction'" in any of the relevant proceedings. *See, e.g.,* Stump v. Sparkman, 435 U.S. 349, 355-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). Plaintiffs' claims against the Defendant Court Staff and Clerks are clearly barred by immunity, as well, because neither the allegations nor the objections show that any of the Defendant Court Staff and Clerks acted other than as they were "specifically required to do under court order or at a judge's discretion." *See, e.g.,* Clay v. Allen, 242 F.3d 679, 682 (5th Circ. 2001) (per curiam) (citing Tarter v. Hury, 646 F.2d 1010, 1013 (5th Cir. 1981)). Likewise, each of the Defendant Attorneys and Law Firms—none of whom represented Plaintiffs in any of the relevant proceedings—has absolute immunity to Plaintiffs' claims expounded in the Third Amended Complaint, which allege only "conduct [that] was 'the kind of conduct in which an attorney engages when discharging . . . duties to [a] client.'" *See, e.g.,* Troice v. Proskauer Rose, L.L.P., 816 F.3d 341, 346-49 (5th Cir. 2016). Finally, with regard to the Government Defendants, it "appears that no relief could be granted under any set of facts that could be proven consistent with the allegations[,]" Newsome, 301 F.3d at 231; Plaintiffs assert only that the Government Defendants have failed to respond to letters Plaintiffs have sent to them or

[3] The Magistrate Judge defines the following groups of Eastern District of Texas Defendants: (1) the Defendant Judges and Courts (Dkt. #128 at 15 n.11); (2) the Defendant Court Staff and Clerks (Dkt. #128 at 15 n.12); (3) the Defendant Attorneys and Law Firms (Dkt. #128 at 15 n.13); and (4) the Government Defendants (Dkt. #128 at 15 n.14).

that the Government Defendants have responded, but not to Plaintiffs' satisfaction [*14] (*e.g.*, Dkt. #126 at 25-27). Plaintiffs' complaints against the Government Defendants accordingly lack an arguable basis in law. The Court finds Plaintiffs' claims against each and every of the Eastern District of Texas Defendants should be dismissed with prejudice.

C. Reliance on Northern District of Texas Findings and on Pre-Filing Injunction— Dismissal of Claims Against Northern District of Texas Defendants and the New Transaction Defendants as Malicious

Plaintiffs also object to the Magistrate Judge's findings and recommendation regarding the Northern District of Texas and New Transaction Defendants. Construing the objections liberally, Plaintiffs seemingly assert the Magistrate Judge's consideration of these prior proceedings (and the Pre-Filing Injunction) are erroneous because those judgments are void either under principles of equity or under Federal Rule of Procedure 60(b) or 60(d). Plaintiffs claim the Northern District of Texas either had no jurisdiction or issued rulings despite active frauds upon the court, rendering the rulings and Pre-Filing Injunction void.

Federal Rule of Civil Procedure 60(b) permits a district court to relieve a party of a final judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, or [*15] excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b); *see also* Rocha v. Thaler, 619 F.3d 387, 400 (5th Cir. 2010) ("Rule 60(b)(6) is commonly referred to as a 'grand reservoir of equitable power to do justice,' [but] the rule is only invoked in 'extraordinary circumstances.'"). The decision whether to grant or deny a Rule 60(b) motion generally "lies within the sound discretion of the district court[,]" Rocha, 619 F.3d at 400, but "[u]nlike motions pursuant to other subsections of Rule 60(b), Rule 60(b)(4) motions leave no margin for consideration of the district court's discretion as the judgments themselves are by definition either legal nullities or not[,]" Carter v. Fenner, 136 F.3d 1000, 1005 (5th Cir. 1998). The U.S. Supreme Court has noted that "[a] judgment is not void[] . . . simply because it is or may have been erroneous." United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010). Indeed, "Rule 60(b)(4) applies only in the rare instance where a judgment [*16] is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." Id. at 271. Courts "generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction. *Id.*

Alternatively, Rule 60(d) allows a court to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d); *see also* Fed. R. Civ. P. 60(b)(3). One court has distinguished between the "fraud" referenced in Rule 60(b)(3) and Rule 60(b):

> The Federal Rules of Civil Procedure provide two standards for judging fraud on the court. The first, Fed.R.Civ.P. 60(b)(3), is aimed at unfairly obtained, not factually incorrect, judgments. Rozier, 573 F.2d at 1339. It provides for relief from judgment because of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Fed.R.Civ.P. 60(b)(3). One who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct

pursuant to Fed.R.Civ.P. 60(b)(3) must prove it by clear and convincing evidence. Rozier, 573 F.2d at 1339 (citing Saenz v. Kenedy, 178 F.2d 417, 419 (5th Cir.1949)). The conduct must have prevented the losing party from fully and fairly presenting its case or defense. Rozier, 573 F.2d at 1339 (citing Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 43 S.Ct. 458, 464, 67 L.Ed. 719, 1924 Dec. Comm'r Pat. 486 (1923)); Optimal Health Care Services, Inc. v. Travelers Ins. Co., 801 F.Supp. 1558, 1561 (E.D.Tex.1992).

Fraud under the second standard, Rule 60(b)'s more stringent savings clause, [*17] is a limited type of fraud. Rozier v. Ford Motor Co., 573 F.2d 1332, 1337-38 (5th Cir.1978). It is fraud (1) that attempts or succeeds in defiling the court or (2) that is perpetrated by officers of the court and prohibits the court from performing the impartial task of judging cases. Kerwit Med. Prods., Inc. v. N. & H. Instruments, Inc., 616 F.2d 833, 837 (5th Cir.1980); 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2870 (1973) (citing Hazel—Atlas Glass Co. v. Hartford—Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250, 1944 Dec. Comm'r Pat. 675 (1944)). Relief based upon this kind of fraud is reserved for the most egregious misconduct and requires a showing of an unconscionable scheme designed to improperly influence the court. Wilson v. Johns—Manville Sales Corp., 873 F.2d 869, 872 (5th Cir.) *cert. denied, 493 U.S. 977, 110 S. Ct. 504, 107 L. Ed. 2d 506 (1989).*

First Nat'l Bank of Louisville v. Lustig, 832 F. Supp. 1058, 1062 (E.D. La. 1993), *aff'd*, 96 F.3d 1554 (5th Cir. 1996).

Here, Plaintiffs do not raise a plausible Rule 60 challenge. In their objections, Plaintiffs merely repeat the same allegations made in the Third Amended Complaint, namely that the various judges, courts, clerks, and attorneys involved in the relevant proceedings have committed frauds upon the court, that the various judges have improperly failed to recuse themselves, and that they also have acted criminally and committed treason (*e.g.*, Dkt. #126 at 28; Dkt. #132 at 15-17). Plaintiffs complain of "lost summons, no hearings, no Orders, no fact witness testimony, confusion . . . another 'void judgment' transferred to 5th [*18] Circuit Court of Appeals with friends of listed Defendants as their Justices for special friendly Orders" (Dkt. #132 at 28), but allege no concrete facts that might permit the Court to infer or determine some conceivable wrongdoing occurred. Furthermore, Plaintiffs allege no jurisdictional defect in any of the relevant proceedings. Without reason to question the propriety of the proceedings or the jurisdiction of the court in the Northern District of Texas Action, the Court finds relief under Rule 60 is inappropriate here. Accordingly, the Court finds Plaintiffs' claims against the Northern District of Texas Defendants and the New Transaction Defendants should be dismissed. Plaintiffs merely repeat the same claims against the Northern District of Texas Defendants and the New Transaction Defendants as were raised before the Northern District of Texas in the Northern District of Texas Action. Moreover, Plaintiffs violated the terms of the Pre-Filing Injunction, as Plaintiffs did not seek leave to file a complaint in the Court prior to filing the instant suit. The Court, therefore, overrules these objections.

CONCLUSION

Having considered each of Plaintiffs' objections (Dkt. #132) and having conducted [*19] a de novo review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report (Dkt. #128) as the findings and conclusions of the Court.

Accordingly, it is **ORDERED** that Plaintiffs' Third Amended Complaint (Dkt. #126) be **DISMISSED**, and that Plaintiffs' claims be **DISMISSED** with prejudice.

All relief not previously granted is **DENIED**.

The Clerk is directed to **CLOSE** this civil action.

IT IS SO ORDERED.

SIGNED this 24th day of February, 2017.

/s/ Amos L. Mazzant

AMOS L. MAZZANT

UNITED STATES DISTRICT JUDGE

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EXHIBIT H-1

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Amrhein v. United States

United States District Court for the Eastern District of Texas, Sherman Division

June 23, 2017, Decided; June 23, 2017, Filed

CIVIL ACTION NO. 4:16-CV-00223-ALM-CAN

Reporter
2017 U.S. Dist. LEXIS 144092 *

DARLENE C AMRHEIN, Plaintiff, v. UNITED STATES OF AMERICA, ET AL., Defendants.

Subsequent History: Adopted by, Petition dismissed by, Dismissed by *Amrhein v. United States, 2017 U.S. Dist. LEXIS 143827 (E.D. Tex., Sept. 6, 2017)*

Motion denied by *Amrhein v. United States, 2017 U.S. Dist. LEXIS 143517 (E.D. Tex., Sept. 6, 2017)*

Prior History: *Amrhein v. La Madeleine, Inc., 2013 Tex. App. LEXIS 2191 (Tex. App. Texarkana, Mar. 6, 2013)*

Core Terms

amended complaint, Courts, allegations, Attorneys, frivolous, immunity, Appeals, malicious, pleadings, Clerks, district court, court staff, misconduct, entities, lawsuit, fail to state a claim, cause of action, magistrate judge, federal lawsuit, per curiam, Injunction, Pre-Filing, violations, raises, factual allegations, judicial immunity, court finds, state court, recommendation, duplicative

Counsel: **[*1]** Darlene C Amrhein, Plaintiff, Pro se, McKinney, TX.

Judges: Christine A. Nowak, UNITED STATES MAGISTRATE JUDGE.

Opinion by: Christine A. Nowak

Opinion

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Darlene C. Amrhein filed a Motion to Proceed *In Forma Pauperis* [Dkt. 4], which the Court provisionally granted [Dkt. 6], staying service of process and discovery in this case pending judicial screening of Plaintiff's claims. The Court directed Plaintiff to file a "clear, succinct" amended complaint "filed in accordance with the Federal Rules of Civil Procedure and the Eastern District of Texas Local Rules" [Dkt. 6]. The Court specifically directed that the amended complaint must set forth "(1) [t]he basis for this Court's jurisdiction over this litigation; (2) [e]ach claim/cause of action Plaintiff alleges or intends to allege[,] . . . specifically identify[ing] which claims/causes of action are asserted against which Defendants in this litigation; [and] (3) [t]he specific factual allegations regarding each Defendant for each claim asserted" [Dkt. 6]. On November 15, 2016, Plaintiff filed her First Amended Petition / Pleadings from Original Petition with Stated Claims, Elements, Case Law & Specific Details as the Court Ordered **[*2]** & Pleads for Relief ("Amended Complaint") [Dkt 11]. Plaintiff's Amended Complaint is now before the Court for judicial screening pursuant to *28 U.S.C. § 1915(e)*. After reviewing the Amended Complaint [Dkt. 11] and all other relevant filings, the Court recommends that Plaintiff's Amended Complaint be **DISMISSED**.

BACKGROUND

On March 31, 2016, Plaintiff filed a Complaint alleging multiple causes of action against numerous defendants stemming from prior alleged workplace mistreatment and related court proceedings [Dkt. 1]. Plaintiff filed a Motion for Leave to Proceed *In Forma Pauperis* [Dkt. 4], which the Court provisionally granted and then further directed Plaintiff to file an amended complaint [Dkt. 6]. Plaintiff subsequently filed an Amended Complaint (the live pleading in this matter) on November 15, 2016 [Dkt. 11]. Plaintiff's Amended Complaint names over 160 defendants, namely her previous employer, certain insurance providers, various attorneys, judges, and judicial staff, and numerous governmental entities and agents (identified more fully *infra*).

Plaintiff's claims in Plaintiff's Amended Complaint originate from disputes between herself and her prior employer, La Madeleine, Inc. Plaintiff alleges La **[*3]** Madeleine and its

employees mistreated her at work, caused her to suffer on-the-job injuries, and subsequently refused to pay for certain medical procedures Plaintiff attempted to claim under her employee insurance plan, among other things [*see, e.g.*, Dkt. 11 at 1, 6-7, 11-13, 20, 29 (asserting claims against La Madeleine, Inc., other employees who worked with Plaintiff, and other entities allegedly associated with La Madeleine, Inc.)]. Plaintiff raises claims related to the purported denial of insurance against certain insurance companies and their agents, as well as against certain physicians: Plaintiff asserts each of these persons and entities worked to deprive her of insurance benefits guaranteed through her employer [*see, e.g.*, Dkt. 11 at 1-3, 6-7, 11-13]. Additionally, Plaintiff makes various allegations against lawyers, judges, and court staff associated with state court litigation she initiated in 1996 on these same claims and prosecuted unsuccessfully (through numerous appeals) for years [*see* Dkt. 11, Exhibits 18-24, 26-34,37-38]. *See also, e.g.*, *Amrhein v. La Madeleine, Inc. (Amrhein State), No. 06-12-00107-CV, 2013 Tex. App. LEXIS 2191, 2013 WL 839227, at *1 (Tex. App.—Texarkana, Mar. 6, 2013, pet. denied)* (the state court case and appeals thereon are hereinafter and collectively referred to as the "*Amrhein State* litigation").

In the **[*4]** *Amrhein State* litigation, Plaintiff "initially sued La Madeleine, Inc., for failing to provide a safe workplace, alleging primarily that she developed carpal tunnel syndrome from the repetitive motion of tossing or mixing salads over a period of less than five months." *Amrhein State, 2013 Tex. App. LEXIS 2191, 2013 WL 839227, at *1*. After Plaintiff lost in the trial court (and following numerous appeals and remands), Plaintiff raised the following issues, among others, as bases for reversing the trial court's unfavorable determination:

> 1) Abuse of Discretion, Arbitrarily Acts; No Reference to Guiding Legal Principles[;] 2) No Jurisdiction on state & federal claims; (ERISA, discriminations, defamation); 3) No Reinstatement from "2009 automatic bankruptcy stay" in case for jurisdiction; 4) Two Abatements refused, not heard & denied & refused authentications; 5) Denied discovery, abuses, no enforcement, sanctions abuses & secrecy of evidence; 6) Treating Appellant differently then Appellee, Exparate [sic] Communications - 2 books; 7) Denied access to courts & elimination of court reporter record for Appeal; 8) Favoritism, secrecy, denied summary judgments & pandering for money-Judge Akin; 9) Denied hearings, settings, motions, evidence, 3 summary **[*5]** judgments & responses, objections, amended pleadings, deposition, affidavits, 62 causes of action as filed; 10) Negligence err decided no examination of complete 16 plus year record for ruling; 11) Gross Negligence is negligence, summary judgment motion contrary to order, errors; 12) Frauds, intents, retaliation, caused injuries, loss, damages & harm against Appellant; 13) Threats, harass, bias, discriminations, prejudice, conflict of interests (federal lawsuit); 14) No examination of record, no case knowledge, elimination & prevention of evidence; 15) Refuse correcting errors, orders, no service to prevent examination, unjust sanctions; 16) No "Due Process," No Jury Trial (paid), 16 plus years litigation, 4 Appeals & costs; 17) Two Recusals, Unjust Sanctions, Incomplete Recusal Hearing, Invalid Order; 18) Cover up, conspiracy, intimidation, confusion, incompetence, multiple judges, errors; 19) Motion For New Trial denied, no hearing, violated state & federal laws, legislating from bench, witness tampering, violations of authority, licensing & oath of office; 20) Violations of 3 Appeal Orders, denied Constitutional Rights, filed evidence is more than scintilla of proof, arbitrary acts **[*6]** without guiding principles under color of law; 21) Invalid, vague Orders, missing records, decide Federal claims, frauds, no jurisdiction.

*2013 Tex. App. LEXIS 2191, [WL] at *1-2*. The state appeals court described Plaintiff's brief as "incomprehensible" and noted:

> It can accurately be described as a fifty-page denunciation of perceived slights by the legal system and her belief that because she has not prevailed, the system has treated her unfairly at every turn. While the brief provides a list of the remaining causes of action of gross negligence, breach of implied contract, bad faith and breach of the duty of good faith and fair dealing, conspiracy, fraudulent conduct, misrepresentations, and intentional infliction of emotional distress (as well as a number of other causes of action not included in the live pleading), she has provided us with no analysis. Even though Amrhein states she has "96 Reasons" for reversal, the brief does not specify any evidence which would demonstrate that a genuine issue of material fact was raised by Amrhein. Simply put, despite having a section labeled "argument," her brief does not argue her position. The argument portion of the briefing relating to the grant of summary judgment to La Madeleine **[*7]** is missing.

*2013 Tex. App. LEXIS 2191, [WL] at *2*. The state appeals court concluded by affirming the state trial court's judgment granting summary judgment against Plaintiff, issuing its opinion to that effect on March 6, 2013. The Texas Supreme Court denied review on February 7, 2014. Meanwhile, Plaintiff repeatedly filed for reconsideration and appeal in both courts until April 22, 2014, when the appeals court denied Plaintiff's final motion. *See* Case record in Texas

Court of Appeals Case No. 06-12-00107-CV.

While the *Amrhein State* litigation was ongoing, and on August 16, 2011, Plaintiff filed suit in the United States District Court for the Eastern District of Texas; the Court transferred Plaintiff's case to the Northern District of Texas on August 26, 2011. *See* Amrhein v. La Madeleine, Inc. (Amrhein NDTX I), No. 3:11-CV-02440-P, 2012 U.S. Dist. LEXIS 191729, 2012 WL 12840376, (N.D. Tex. Dec. 21, 2012), *aff'd*, *589 F. App'x 258 (5th Cir. 2015)* (per curiam) (the proceedings before the Northern District of Texas and subsequent appeal to the Fifth Circuit are hereinafter referred to as the "*Amrhein NDTX I* litigation"). In the *Amrhein NDTX I* litigation, Plaintiff's "employment dispute" the center of her claims in the *Amrhein State* litigation "grew into allegations against all branches of government for the State of Texas[,]" **[*8]** including sundry judges, their staff, legislators, and executive branch members. 2012 U.S. Dist. LEXIS 191729, [WL] at *1. Plaintiff also named as defendants in the *Amrhein NDTX I* litigation various attorneys allegedly involved in the *Amrhein State* litigation. *Id.* The Northern District dismissed Plaintiff's claims with prejudice, finding Plaintiff had failed to state a claim upon which relief could be granted specifically because Plaintiff's amended complaint failed to meet even the permissive federal pleading standard required of *pro se* litigants. *See* 2012 U.S. Dist. LEXIS 191729, [WL] at *3-4.

In the instant action, Plaintiff now raises for the third time all of the same claims she raised in the *Amrhein NDTX I* litigation and, just as she did in that lawsuit, has appended claims against every member of the judiciary remotely associated with the *Amrhein NDTX I* litigation, as well as their staff and any attorney representing other parties to that litigation [*see, e.g.*, Dkt. 11 at 1-4, 8-10]. Further, Plaintiff attempts to raise claims against various members of Congress, the federal executive branch, and every justice of the United States Supreme Court [*see, e.g.*, Dkt. 11 at 9-10]. Plaintiff summarizes her claims as follows:

> Plaintiff Amrhein work-related injuries **[*9]** by La Madeleine Inc., Fortis & Union Security Insurance, et al. Working, months of assaults, ignored 3 medical restrictions, threats, loss of pay, defame, slander & refused medical treatments. Required 4 operations for life-long disabilities. Denied Texas Worker's Compensation as non-subscriber La Madeleine Inc.'s responsibilities. Refused active Long Term Disability Insurance Plan. Refused policy information to prevent Appeal. 1996 lawsuit filed timely into Texas & Federal Courts, but "no due process," "no equal protection," frequent injustices, violations of Constitutional Rights & Laws. Courts established "no jurisdiction, no hearings, no testimony, no examined evidence," no court records & no transcripts as stored, missing & destroyed. Ignored U.S. Bankruptcy Stay Law caused for 10 years. No legal remedies, but invalid "void judgments," cover up & conspiracy, while committing "Fraud Upon The Courts." "Conflict of interest," refused recusals & legal disqualifications. Presiding judges as Defendants ex-employees / friends used for their favorable Orders after "no examination of evidence & refused briefs on Appeal. La Madeleine Inc.'s engaged in frauds, exparte communications, influenced **[*10]** judges, refused discovery, no service & no court access. Defendants committed "Fraud Upon The Courts," denied: filings, no jury trial & appearance of bribe. Protection by Judges & Justices contrary to settled laws, caused additional injuries & various damages. Evidence, court records, discriminations, bias, prejudice, retaliation, tricks, surprise, cover up, abuses, conspiracy, judicial misconduct & intimidations by illegal use of sanctions for 20 years & "no legal remedies for assaults & injuries. Use of Frauds, unjust enrichments, "Fraud Upon Courts" by multiple misconducts, illegal activities violated Texas & United States Constitutional Rights. Federal Officials & all Courts did "nothing" about known intentional injustices. Plaintiff informed to file lawsuit by the United States
> Department of Justice against "United States of America" for all violations & injustices.

[Dkt. 11 at 1-2 (errors and phrasing in original)]. In short, Plaintiff claims conspiracies, frauds, and biased judges who worked with attorneys representing other parties (as well as many entities and members of the federal and Texas state governments) caused her damages because, she perceives, her claims have not received **[*11]** a fair shake in court. These claims, as well as her underlying claims related to her employment with La Madeleine and its alleged termination and/or denial of Plaintiff's insurance benefits, have already been dismissed by the state courts and the Northern District of Texas and now are before the Eastern District of Texas for screening pursuant to *28 U.S.C. § 1915(e)*.

Before turning to its analysis, the Court notes Plaintiff has filed more than six suits in the Texas state and federal courts, and each of these cases has been dismissed for frivolousness and/or for failure to comply with basic pleading or procedural requirements. *See, e.g.*, Amrhein State, 2013 Tex. App. LEXIS 2191, 2013 WL 839227; Amrhein NDTX I, 2012 U.S. Dist. LEXIS 191729, 2012 WL 12840376; Balistreri v. Remax Realty, No. 05-10-00611-CV, 2011 Tex. App. LEXIS 333, 2011 WL 149984, at *1 (Tex. App.—Dallas Jan. 19, 2011, pet. denied); Balistreri-Amrhein v. AHI, No. 05-09-01377-CV, 2012 Tex. App. LEXIS 6258, 2012 WL 3100775, at *1 (Tex.

App.—Dallas July 6, 2011, pet denied); Amrhein-Macon v. Wood, No. 2-05-158-CV, 2005 Tex. App. LEXIS 5552, 2005 WL 1654762, at *1 (Tex. App.—Fort Worth July 14, 2005), cert. denied 549 U.S. 916, 127 S. Ct. 263, 166 L. Ed. 2d 203; Amrhein v. Riechert, No. 3:12-CV-03707-G-BK, 2013 U.S. Dist. LEXIS 40343, 2013 WL 1155473, at *13-14 (N.D. Tex. Feb. 1, 2013), report and recommendation adopted, No. 3:12-CV-3707-G BK, 2013 U.S. Dist. LEXIS 39228, 2013 WL 1174571 (N.D. Tex. Mar. 21, 2013) (Amrhein NDTX II); Balistreri-Amrhein v. Verrilli, No. 4:16-CV-112, 2017 U.S. Dist. LEXIS 25914, 2017 WL 726919, at *1 (E.D. Tex. Feb. 24, 2017). In each of Plaintiff's cases, she has filed flurries of largely incomprehensible motions, letters, and other requests for relief both prior to and following the respective court's disposition of her claims, resulting in her **[*12]** being deemed by other courts as a vexatious litigant.

To that end, in one of Plaintiff's prior suits before the Northern District, the Northern District court evaluated Plaintiff's litigation history and determined entry of a pre-filing injunction was merited. The Pre-Filing Injunction reads as follows:

> **Darlene Amrhein is prohibited from filing any new civil action in any United States district court** unless she first files a motion requesting leave of court to do so and attaches thereto copies of (1) her proposed complaint, (2) the magistrate judge's findings, conclusions and recommendation in this case, (3) this court's order accepting the findings, conclusions and recommendation of the United States Magistrate Judge, and (4) the judgment in this case.

Amrhein NDTX II, 2013 U.S. Dist. LEXIS 40343, 2013 WL 1155473, at *13-14; report and recommendation adopted, No. 3:12-CV-3707-G BK, 2013 U.S. Dist. LEXIS 39228, 2013 WL 1174571 (N.D. Tex. Mar. 21, 2013) (hereinafter the "Pre-Filing Injunction"). This Court has also recently examined Plaintiff's prolific filing history and Plaintiff's continued and repeated failure to comply with the Northern District of Texas Pre-Filing Injunction. *See* Balistreri-Amrhein, No. 4:16-cv-112, 2017 U.S. Dist. LEXIS 25914, 2017 WL 726919, at *5-6 (E.D. Tex. Feb. 24, 2017) (hereinafter "*Amrhein EDTX I*").[1]

[1] Plaintiff requested reconsideration of the Court's findings and disposition of her claims in *Amrhein EDTX I*, which the Court rejected on April 24, 2017. *See* Eastern District of Texas Case No. 4:16-cv-112, Dkt. 137. Plaintiff responded by filing an additional motion seeking reconsideration of the Court's denial of her previous motion for reconsideration. Eastern District of Texas Case No. 4:16-cv-112, Dkt. 138.

LEGAL STANDARD

A district court has authority to dismiss *sua sponte* ***[*13]*** a complaint filed *in forma pauperis* if the court finds that the complaint filed "[1] is frivolous or malicious; [2] fails to state a claim on which relief may be granted; or [3] seeks monetary relief against a defendant who is immune from such relief." *28 U.S.C. § 1915(e)(2)(B)*; *see* Potts v. Texas, 354 F. App'x 70, 71 (5th Cir. 2009) (per curiam) ("The district court shall dismiss a case filed IFP at any time if the complaint is frivolous or malicious.") (citing Siglar v. Hightower, 112 F.3d 191, 193 (5th Cir. 1997)). A court, however, must liberally construe a *pro se* litigant's pleadings in analyzing those pleadings under *Section 1915(e)*. *See* Flanagan v. LaGrone, No. 9:16-CV-00059-MHS, 2016 U.S. Dist. LEXIS 102633, 2016 WL 4163557, at *1 (E.D. Tex. July 6, 2016) (citing Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)); *see also* Watson v. Ault, 525 F.2d 886, 891 (5th Cir. 1976) (explaining that, in the *pro se* context, *Haines v. Kerner* modifies the typical *Section 1915(e)* standard of review for legal sufficiency).

Under *Section 1915(e)(2)(B)(i)*, courts must evaluate a complaint filed *in forma pauperis* for frivolousness or maliciousness. Cases "duplicative of a pending or previous lawsuit" are malicious. Potts, 354 F. App'x at 71 (citing Pittman v. Moore, 980 F.2d 994, 995 (5th Cir. 1993) and Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)); *see also* McBarron v. Fed. Bureau of Prisons, 332 F. App'x 961, 963-64 (5th Cir. 2009) (per curiam) ("The majority of . . . claims involved the same general series of events, facts, and conditions that were at issue in an earlier . . . proceeding[] and therefore constituted '[r]epetitious litigation of virtually identical causes of action' that were properly dismissed as malicious."). This is so even where the plaintiff **[*14]** "raise[s] new claims," so long as those claims "grow out of the same allegations" as were presented in the prior or pending suit(s). *Id.*; *see also* Potts v. Texas, No. 1:07-CV-632, 2008 U.S. Dist. LEXIS 125707, 2008 WL 4525007, at *3 (E.D. Tex. Sept. 26, 2008) ("While there may be some new defendants and claims buried within the original and two amended complaints filed in this district, the new factual allegations are the same 'clearly baseless,' 'fanciful,' . . . types of claims that were dismissed as frivolous in [plaintiff's previous cases]."). A court may dismiss a case either as malicious or as frivolous for being duplicative. *See* Silva v. Stickney, No. 3:03-cv-2279-D, 2005 U.S. Dist. LEXIS 22198, 2005 WL 2445433, at *4 (N.D. Tex. Sept. 30, 2005) ("Courts may appropriately dismiss an *in forma pauperis* action as frivolous, when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff.'" (quoting Wilson v. Lynaugh,

878 F.2d 846, 850 (5th Cir. 1989))); see also Yarborough v. Sheriff, Tarrant Cty., Civil Action No. 4:11-cv-207-Y, 2011 U.S. Dist. LEXIS 115656, 2011 WL 4736302, at *1-2 (N.D. Tex. Oct. 5, 2011) (Claims presented that "are duplicative of claims already asserted and dismissed in [a] previous case . . . may be dismissed as frivolous or malicious[,]" or, "[a]lternatively, [because they] are . . . barred by the doctrine of *res judicata*[.]").

Further, claims without **[*15]** an arguable basis in law or fact are also frivolous. *See, e.g.*, Brewster v. Dretke, 587 F.3d 764, 767 (5th Cir. 2009); *see also* Moore v. Mabus, 976 F.2d 268, 270 (5th Cir. 1992) (distinguishing factual and legal frivolousness). A complaint lacks an arguable basis in law where the complaint "is grounded upon an untenable, discredited, or indisputably meritless legal theory, including alleged violations of a legal interest that clearly does not exist." Brown v. Allen, No. 3:16-cv-214-N-BN, 2016 U.S. Dist. LEXIS 63422, 2016 WL 2855581, at *2 (N.D. Tex. Apr. 25, 2016) (citing Neitzke v. Williams, 490 U.S. 319, 326-27, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989)); *see also* Booker v. Koonce, 2 F.3d 114, 116 (5th Cir. 1993) (emphasizing that the claim must truly lack merit, such as where the defendant has immunity to suit). In examining claims for legal frivolousness, courts may reject wholly conclusory claims, Bilbrew v. Johnson, 239 F. App'x 49, 50 (5th Cir. 2007), or those that fail arguably to comply with the prescribed pleading standard requiring a short and plain statement demonstrating entitlement to relief, Harris v. U.S. Dep't of Justice, 680 F.2d 1109, 1110 (5th Cir. 1982) (per curiam). In like manner, when screening for factual frivolousness a court need not "accept without question the truth of the plaintiff's allegations[,]" even where the allegations "cannot be rebutted by judicially noticeable facts." Denton v. Hernandez, 504 U.S. 25, 32, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992). Instead, if the complaint's "factual contentions are clearly baseless"—such as "claims describing fantastic or delusional scenarios" or situations that are "wholly incredible"—the court may *sua sponte* dismiss. **[*16]** *Id.* (internal quotations omitted).

A court also must determine whether any claims not deemed frivolous or malicious "fail to state a claim on which relief may be granted" or else "seek[] monetary relief from a defendant who is immune from such relief." *28 U.S.C. § 1915(e)(2)(B)(ii)-(iii)*. The immunity inquiry generally folds into the frivolousness analysis. *Cf.* Booker, 2 F.3d at 116 ("A claim against a defendant who is immune from suit is frivolous because it is based upon an indisputably meritless legal theory."). But a defendant's immunity acts as an independent basis for *Section 1915(e)* dismissal where a plaintiff seeks monetary damages from such defendant. *See* Krueger v. Reimer, 66 F.3d 75, 76-77 (5th Cir. 1995) (per curiam); Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994) (per curiam). Likewise, the plaintiff's failure to state a claim may alone serve as a basis for dismissal. *28 U.S.C. § 1915(e)(2)(B)(ii)*; Pleasant v. Sinz, No. 9:15-CV-00166-MHS, 2016 U.S. Dist. LEXIS 119566, 2016 WL 4613359, at *2 (E.D. Tex. Aug. 5, 2016). In determining whether a complaint fails to state a claim on which relief may be granted, and in contrast to the frivolousness analysis, a court must "accept all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." In re Katrina Canal Breaches Litig., 495 F.3d 191, 205-06 (5th Cir. 2007). The complaint must contain facts sufficient to establish plausible, rather than merely conceivable, claims to relief in order to survive such scrutiny. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Claims are "facial[ly] plausible when the **[*17]** plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged[,]" i.e., "more than a sheer possibility that a defendant acted unlawfully." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). By contrast, claims are "implausible on [their] face when 'the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.'" Harold H. Huggins Realty, Inc. v. FNC, Inc., 634 F.3d 787, 796 (5th Cir. 2011) (quoting Iqbal, 556 U.S. at 679).

PRE-FILING INJUNCTION

The Court notes initially that Plaintiff has yet again violated the Pre-Filing Injunction entered by the Northern District of Texas in filing this lawsuit. *See* Amrhein NDTX II, 2013 U.S. Dist. LEXIS 39228, 2013 WL 1174571, at *1. By Order of the Northern District of Texas, Plaintiff is required to file a Motion for Leave prior to filing any lawsuit in any federal court, attaching the following: (1) the proposed complaint; (2) the *Amrhein NDTX II* opinion, (3) the Pre-Filing Injunction, and (4) the judgments in *Amrhein NDTX II*. *See id.* Although Plaintiff references the underlying state actions and the *Amrhein NDTX I* litigation in the Amended Complaint, Plaintiff failed to file the requisite motion for leave (or any of the required attachments) prior to filing the instant suit. Plaintiff's failure to comply with the Order of the Northern District **[*18]** of Texas alone is sufficient to justify dismissal of Plaintiff's live pleading, the Amended Complaint. *See, e.g.*, Potts, 354 F. App'x at 71 ("A district court may bar a vexatious litigant from filing future . . . complaints unless she seeks the prior approval of a district or magistrate judge.") (citing Murphy v. Collins, 26 F.3d 541, 544 (5th Cir. 1994)).

ANALYSIS

Plaintiff has named over one hundred sixty defendants. Accordingly, for purposes of clarity, the Court has grouped the defendants into three groups as follows: (1) the Northern District of Texas Defendants,[2] (2) the Related Defendants,[3] and (3) the Federal Lawsuit Defendants.[4] To the extent the

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[2] In the *Amrhein NDTX I* litigation, Plaintiff named the following entities and persons, alleging each was directly or indirectly involved in the employment-related matters or engaged in some misconduct or bias in adjudicating or litigating the underlying state actions: La Madeleine, Inc., State Bar of Texas; Governor Rick Perry, Texas Attorney General (then Gregg Abbott), Texas Secretary of State (then Hope Andrade), Texas State Legislature, Dallas County, John F. Warren (County Clerk and Records), Dallas Texas Courts & Judges (specifically, County Court at Law No. 3, Judge Sally Montgomery, County Court at Law No. 1, Judge D'Metria Benson, and Judge Ted Akin, as well as "All Court[s] & Judges" in the George L. Allen Building), the Regional Administrative Court, Judge John Ovard, the County Court at Law Fifth District of Texas, the Supreme Court of Texas, Attorney Jerry Fazio, Owen & Fazio Law Firm, Attorney Brent Cornwell, Attorney Robert Clarkson, Judge Jack Pierce, Judge Russell Roden, Judge Robert Jenevein, Union Security Insurance Company, Michelle Falen, the Texas Department of Insurance, and the Texas Insurance Commissioner. These defendants are hereinafter and collectively referred to as "the Northern District of Texas Defendants." Plaintiff already have pursued claims against each of these defendants in the *Amrhein NDTX I* litigation that have previously been dismissed.

[3] Plaintiff names the following entities and persons in the Amended Complaint, alleging each was directly or indirectly involved in the employment-related matters or engaged in some misconduct or bias in adjudicating or litigating the underlying state actions: La Madeleine of Texas, Inc., La Madeleine, dc Corps, Inc., Groupe Le Duffe, Inc., Patrick Leon Esquerre (Founder, Owner, Advisor & Seller), Mr. John Corcoran (President/CEO), John Cahill (President), Duncan Davis (Vice President), Wallace B. Doolin (CEO), Fortis Benefits Insurance Company & Agents, Assurant Employee Benefits, Occupational Health (La Madeleine Company Healthcare Provider), Dr. John Touhey (Company Physician & Reporting Agent), Gwynn Carver, M.D. (Company Physician & Drug Testing), Mark S. Hutzel (La Madeleine Operations & Direct Manager), Karen Gentry (La Madeleine Employee & Supervisor), Sharon Crane (La Madeleine Employee & Long Term Disability Insurance), Steve Roos (La Madeleine Employee Corporate Office), "Other La Madeleine Employees Witnesses — Becky, Monique, Judith, Carlos, et al.," Essilor Vision Foundation, Esquerre Enterprises, Le Madeleine (Florida) Inc., La Madeleine Boca Raton, The Wine Gourmet, Inc., Holder Services, Inc., LMI Investment #1 Company LTD, Esquerre Property Company LTD, Attorney John Owen, Attorney Tracy Stoker, Dodge, Fazio, Anderson & Jones, Attorney Jason Kipness, Kipness Law Firm, Attorney S. Russell Headrick, Lathrop & Gage, LLP, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., Attorney Erika M. Kane, Attorney Peter Harlan, Attorney Michael James Patterson, Attorney Cynthia Canfield Hamilton, Attorney Susan Farris, Law Offices of Gallerson & Yates, Vincent, Sarafino, Geary, Waddell & Jenevein, Attorney David R. Gibson, The Gibson Group, Judge Mark Greenberg, Attorney Michael R. Snipes (Retired Judge), Broden, Mickelsen, Helms, & Snipes LLP, Judge Bill F. Coker, Judge Tom Fuller, Judge Mary Murphy, Bailiff Gary Christensen, Dallas Sheriff's Department Lt. Dohmann, Dallas County Sheriff Department Lupe Valdez, Dallas County Internal Affairs/Bailiffs, Lt. B. Terrell Internal Affairs Dallas Sheriff's Department, Cheryl Duncan (Transcription Reporter), Cayse Coskey (Court Reporter), Richard Rhode (Court Reporter), Fawn Cave (Court Reporter), Denise Jay (Court Reporter), Veronica Hood, Aneesah Anderson, Court Chief Deputy Claudia McCoy, Court Clerk Lisa Matz, Fifth District Court of Appeals at Dallas, Justice Joseph Morris, Justice Mark Whittington, Justice Michael O'Neill, Justice Carolyn Wright, Justice Elizabeth Lang-Miers, Justice Martin Richter, Justice Douglas Lang, Justice Linda Thomas, Justice David Bridges, Justice Kerry P. Fitzgerald, Sixth District Court of Appeals at Texarkana, Justice Josh R. Morriss III, Justice Jack Carter, and Justice Bailey Moseley. These defendants are hereinafter and collectively referred to as "the Related Defendants." Plaintiff raises claims against each of these defendants related to the same underlying facts as were raised in *Amrhein NDTX I* and, as best the Court can tell, does so for the first time in the present case.

[4] Plaintiff also names the following entities and persons in the Amended Complaint, alleging that each was either directly or indirectly involved in and acting unlawfully with regard to the *Amrhein NDTX I* litigation: United States District Court for the Eastern District of Texas ("Judge Don Bush Venue Transfer 2011"), United States Northern District Court, Judge Jorge Solis, Magistrate Judge Renee Toliver, Judge A. Joe Fish, Clerk of Court Karen Mitchell (Northern District), Chief Judge Carl E. Stewart, Shelly Saltzman (Fifth Circuit), United States Court of Appeals Fifth Circuit, Judge Thomas Reavely, Judge Leslie H. Southwick, Judge James L. Dennis, Clerk of Court Lyle W. Cayce, United States Supreme Court & Justices; Justice Sonia Maria Sotomayor; Justice Stephen Gerald Breyer; Justice Samuel Anthony Alito, Jr.; Justice Elena Kagan; Justice Clarence Thomas; Justice Antonin Gregory Scalia (Deceased); Justice Anthony McLeod Kennedy; Justice Ruth Joan Bader Ginsburg; Chief Justice John G. Roberts; Clerk Advisor Jacob C. Travers; Supreme Court Clerks Scott S. Harris and James Atkinson, United States of America; President Barack Hussein Obama, Vice President Joseph Biden, United States Solicitor General Donald B. Verilli, Jr., United States Attorney General Loretta Elizabeth Lynch, United States Department of Justice, U.S. Attorney's Office for the Northern District of Texas; John R. Parker (Northern District); Malcolm Bales (U.S. Attorney's Office); Federal Bureau of Investigation; FBI Director James B. Comey; United States Senate Judiciary Committee; Judiciary Senate Chairman Charles E. "Chuck" Grassley, United States House Judiciary Committee; Judiciary House Chairman Robert Bob Goodlatte; Ted Cruz (U.S. Senator and Senate Judicial Chairman), John Cornyn (U.S. Senator and Senate Judicial Committee); United States Senate (114th Congress), United States House (114th Congress); Administrative Office of United States Courts, Office of General Counsel, United States Attorneys Office (Malcolm Bale), Texas Office of Court Administration, Dan Patrick (Texas Lt. Governor),

Court has inadvertently omitted any named defendant in the lists included herein, the Court clarifies that this Report and Recommendation addresses *all* named defendants and *all* claims raised by Plaintiff in her Amended Complaint.

I. Northern District of Texas Defendants and Related Defendants: Plaintiff's Suit is Wholly Duplicative of the* Amrhein NDTX I *and* Amrhein State *Litigation

Turning first to the Northern District of Texas Defendants and the Related Defendants, Plaintiff raises the same or substantially similar claims against these Defendants **[*19]** in this case (or those similarly situated) as Plaintiff raised in the *Amrhein NDTX I* litigation [*compare* Dkt. 11, *with* Amrhein NDTX I, 2012 U.S. Dist. LEXIS 191729, 2012 WL 12840376]. Indeed, Plaintiff's claims before this Court wholly duplicate those claims Plaintiff raised before the Northern District of Texas and are, therefore, subject to dismissal under *Section 1915(e)* as malicious and/or frivolous. The Northern District of Texas summarized the claims Plaintiff raised before that Court as follows:

> This case involves an employment dispute that grew into allegations against all branches of government for the State of Texas. Defendant La Madeleine, Inc. ("La Madeleine") employed Plaintiff from August 1994 to February 1996. (Doc. 1, p - 12) On August 29, 1994, Plaintiff sued La Madeleine in state court. (Doc. 103, p. 5) Plaintiff avers that she litigated this dispute in Texas state court—both at the trial and appellate levels—for over fourteen years. (Id. at 10).
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> After exhausting her options in state court, Plaintiff turned to the federal system. On August 16, 2011, proceeding pro se, Plaintiff filed suit in the Eastern District of Texas, alleging numerous constitutional and statutory violations against La Madeleine as well as various state entities and officials. (Doc. **[*20]** 1, pp. 20-22) On August 26, 2011, the lawsuit was transferred to the Northern District of Texas. (Doc. 61) On April 5, 2012, Plaintiff moved to supplement her pleadings. (Doc. 73) On May 10, 2012, Plaintiff moved to join several indispensable parties. (Doc. 75) On May 16, 2012, Plaintiff filed her First Amended Complaint, (Doc. 78) After a series of motions to dismiss, on July 17, 2012, Plaintiff moved for leave to file a Second Amended Complaint. (Doc. 87) On that same day, Plaintiff moved to join four other indispensable parties. (Doc. 88) After a series of motions to dismiss and without a ruling on her motion for leave, on August 10, 2012, Plaintiff moved to file a Third Amended Complaint. (Doc. 98) Without an order granting leave, on August 24, 2012, Plaintiff filed a Third Amended Complaint totaling over 200 pages. (Doc. 102) Six days later, Plaintiff moved to supplement the Third Amended Complaint. (Doc. 103) Thereafter, Defendants filed a flurry of motions to strike these pleadings. (Docs. 106, 109).
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> . . .
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> Liberally construing Plaintiffs third attempt to satisfy the federal pleadings standards, Plaintiff fails to state claims for relief on all grounds asserted. Wading through **[*21]** 200 pages of pleadings and supplementary filings, Plaintiff vents general frustration toward the legal process in state court and then—defendant-by-defendant—lists all causes of action that she pursues against each entity. (See Docs. 102, 103) The pleadings did not discuss elements and fail to link specific facts to the asserted actions. Plaintiff concludes by requesting relief for injuries that seem nebulous without facts to demonstrate actual harm. To the extent that legally relevant facts are present, there is nothing to connect an unsuccessful foray in state court to the litany of claims now championed in the Third Amended Complaint. In Plaintiff's third effort, it is still unclear how these under-pled vague facts rise up and create a right to recover in law or equity.

*Amrhein NDTX I, 2012 U.S. Dist. LEXIS 191729, 2012 WL 12840376, at *1, 3, aff'd 589 F. App'x 258.* As such, the Northern District found Plaintiff's claims against each of the Northern District of Texas Defendants failed to state a claim upon which relief may be granted, noted Plaintiff's apparent frustration with the litigation process, and concluded Plaintiff's claims should be dismissed with prejudice. *2012 U.S. Dist. LEXIS 191729, [WL] at *4.*

In like manner, here, Plaintiff states her claims before the Court over the course of **[*22]** thirty largely incomprehensible, rambling, single-spaced pages, alleging numerous violations by the Northern District of Texas Defendants and the Related Defendants of various state and federal statutory and constitutional provisions, such as the "*Due Process Clause*," "RICO," and

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Texas Ethics Commission, Texas Workers Compensation Division, Robert Shipe & Richard F. Reynolds, Texas Senate; Texas Senate Members, City of Dallas, Mayor of Dallas Mike Rawlings, Dallas County Judge Clay Jenkins, Dallas City Hall, Dallas County District Attorney's Office (Susan Hawk), and Dallas City Council & Members. These defendants are hereinafter and collectively referred to as "the Federal Lawsuit Defendants." Plaintiff attempts to raise claims against each of these defendants that are in some manner related to the *Amrhein NDTX I* litigation.

42 U.S.C. § 2000e-3(a), among many others[5] [*see* Dkt. 11]. Plaintiff sues every Northern District of Texas Defendant and every Related Defendant for these violations individually and under the theory of *respondeat superior*. The allegations against each of the Northern District of Texas Defendants and the Related Defendants relate (often quite tangentially) to the employment and insurance issues Plaintiff alleges she experienced and the subsequent proceedings in the underlying state actions. Moreover, Plaintiff presents her allegations in a disorderly manner with no concrete allegations of wrongdoing. Plaintiff's claims in this suit and the legal vehicles through which Plaintiff attempts to bring them—*respondeat superior*, *Title VII*, RICO—mirror the claims Plaintiff raised before the Northern District of Texas. *Compare* Amrhein NDTX I, 2012 U.S. Dist. LEXIS 191729, 2012 WL 12840376, *with* Dkt. 11. The Court therefore concludes that Plaintiff's claims in the Amended Complaint merely duplicate the claims raised before **[*23]** the Northern District in the *Amrhein NDTX I* litigation. And in those instances where Plaintiff raises new claims against either Related Defendants or Northern District of Texas Defendants, those new factual allegations/claims are the same clearly baseless types of claims that were dismissed for failure to state a claim in the Northern District. *See* Potts, 2008 U.S. Dist. LEXIS 125707, 2008 WL 425007, at *3 (citing Neitzke, 490 U.S. at 325-27). Accordingly, each and every one of the claims asserted by Plaintiff against the Northern District of Texas Defendants and the Related Defendants must be dismissed under *Section 1915(e)(2)(B)(i)* as frivolous and malicious for duplicating her previously dismissed claims. Potts, 354 F. App'x at 71; Pittman, 980 F.2d at 995; Bailey, 846 F.2d at 1021.

II. The Federal Lawsuit Defendants

Plaintiff's Amended Complaint also raises claims against various judges, judicial staff, and federal and state executive and legislative entities and agents who Plaintiff alleges were somehow involved with the *Amrhein NDTX I* litigation [Dkt. 11]. Plaintiff alleges therein that each of the Federal Lawsuit Defendants engaged in bias, discrimination, and retaliation, as well as either judicial or attorney misconduct or outright omission and/or failure to act while participating either directly or indirectly in the *Amrhein NDTX I* litigation. These allegations **[*24]** have not previously been asserted, as they arise wholly from the district and appeals proceedings in the *Amrhein NDTX I* litigation. Accordingly, the Court screens these claims for "fail[ure] to state a claim on which relief may be granted" or for "seeking monetary relief from a defendant who is immune from such relief[,]" rather than strictly for maliciousness or frivolousness. *28 U.S.C. § 1915(e)(2)(B)(ii)-(iii)*. The Court further defines the following sub-groups of the Federal Lawsuit Defendants in order to more efficiently analyze Plaintiff's many claims against the Federal Lawsuit Defendants: (A) Defendant Judges and Courts, (B) Defendant Court Staff and Clerks, (C) Defendant Attorneys and Law Firms, and (D) Government Defendants.

A. Defendant Judges and Courts

Plaintiff alleges variously that the Defendant Judges and Courts engaged in "bias, prejudice, retaliation" towards Plaintiff and that these Defendants were unfamiliar with Plaintiff's case and refused to recuse themselves in Plaintiff's proceedings before each [*e.g.*, Dkt. 11 at 11]. Plaintiff's claims against the Defendant Judges and Courts are barred by the doctrine of judicial immunity. Judges generally have absolute immunity for judicial actions taken within the **[*25]** scope of their jurisdiction, which also means judicial officers are generally immune from suits for money damages. *See* Stump v. Sparkman, 435 U.S. 349, 356, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); Mireles v. Waco, 502 U.S. 9, 9-10, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) (per curiam); Davis v. Tarrant Cty., 565 F.3d 214, 221-22 (5th Cir. 2009). "Judicial immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction." Boyd v. Biggers, 31 F.3d 279, 284 (5th Cir. 1994). "A judge's acts are judicial in nature if they are normally performed by a judge and the parties affected dealt with the judge in his judicial capacity." Id. at 285 (internal quotation marks omitted). But "judicial immunity is not overcome by allegations of bad faith or malice," Mireles, 502 U.S. at 11, and "[d]isagreeing with a judge's actions does not justify depriving that judge of his or her immunity," Greenlee v. U.S. Dist. Court, No. 09-2243-cv—FJG, 2009 U.S. Dist. LEXIS 44053, 2009 WL 1424514, at *2 (D. Kan. May 21, 2009) (citing Stump, 435 U.S. at 363).

Here, Plaintiff's claims against each of the Defendant Judges and Courts relate to those Defendants' actions as judges; Plaintiff has not alleged or shown that any of the Defendant Judges took actions outside the scope of his or her work as a judge [*e.g.*, Dkt. 11 at 11]. Specifically, Plaintiff alleges as follows:

> Defendants Courts, Judges Justices, Attorneys & Clerks, et al allowed "Fraud Upon **[*26]** Courts" by

[5] Plaintiff purports to claim recovery through at least thirty different statutes and causes of action [Dkt. 11 at i.-ii.]. Plaintiff asserts no facts in connection with such statutes. In most instances, she merely lists or includes citations to these statutes and/or causes of action in the body of the Amended Complaint.

establishing: no jurisdiction, no hearings, no direct testimony from "fact witnesses," no filed evidence accepted before Courts, "no unbias trier of facts," no enforcement of Civil Rules & Procedures, no fairness, "no due process," No Justice to correct outcome for 20 years. Plaintiff Amrhein did receive "conflict of interest," denied Constitutional Rights, denied Laws, refused U.S. Bankruptcy Laws & Stay, refused recusal motions on "automatic disqualified" judges, threats, perjury, eliminated & refused court records denied briefing for Appeals, "no service," & paid court costs. Bias, Prejudice, Silence, Retaliation, Exparte Communications, Omissions, Corruption, Collusion, Misconduct, Mistakes, Fraud, Malice, Trickery, Conspiracy, Destruction of Evidence, No Access to Courts & Manipulation ends with "void judgments," no valid Appeals, against Rule of Law, Texas Constitution & our United States Constitution. Refusing customary legal standards & "equal protection" is basis for this lawsuit & denied all "legal remedies" for injuries caused by these Defendants, favors for friends, which requires "redress" as directed by United States Department of Justice to sadly sue "United **[*27]** States of America" restitution.

[Dkt. 11 at 11].

Each of Plaintiff's claims against the Defendant Judges appear to allege misconduct in connection with the hearing of Plaintiff's claims or appeals in the *Amrhein NDTX I* litigation and/or investigation of complaints of judicial misconduct by other judges. All of these acts fall within the purview of "judicial acts," and are accordingly absolutely barred by the doctrine of judicial immunity. *See Oliver v. Trial Court Judges, No. 3:15-CV-2962-P-BN, 2015 U.S. Dist. LEXIS 142944, 2015 WL 6438477, at *4-5 (N.D. Tex. Sept. 15, 2015), rec. adopted, No. 3:15-CV-2962-P, 2015 U.S. Dist. LEXIS 142693, 2015 WL 6460030 (N.D. Tex. Oct. 21, 2015)* (dismissing claims against judges based on judicial immunity). Further, because Plaintiff's claims against the various state and federal courts (e.g., the United States Court of Appeals for the Fifth Circuit) allege substantially the same claims as against the individual Defendant Judges, such claims against the Courts are also barred by judicial immunity. *See Brown v. Supreme Court of La.*, No. CIV.A. 88-3255, 1988 WL 137486, at *1 (E.D. La. Dec. 19, 1988) (dismissing claims against "Louisiana Supreme Court (and its judges)" based on judicial immunity). Moreover, Plaintiff fails to allege any concrete facts that might tie any particular Defendant Judge or Court to the alleged wrongdoing—i.e., her Amended Complaint **[*28]** lacks sufficient factual allegations. *See Iqbal, 556 U.S. at 679* ("In keeping with these principles a court . . . can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."). Accordingly, the Court finds each of Plaintiff's claims against the Defendant Judges and Courts should be dismissed pursuant to *Section 1915(e)(2)(B)(ii)*.

B. Defendant Court Staff and Clerks

Plaintiff's claims against the Defendant Court Staff and Clerks are likewise barred by immunity. The Fifth Circuit has held that court clerks "have absolute immunity from actions for damages arising from acts they are specifically required to do under court order or at a judge's discretion." *Clay v. Allen, 242 F.3d 679, 682 (5th Cir. 2001)* (per curiam); *see Kastner v. Lawrence, 390 Fed. Appx. 311, 315 (5th Cir. 2010)*. The present case clearly is apposite.

Plaintiff makes the same factual allegations against the Defendant Court Staff and Clerks as quoted *supra* at Section II.A. (against the Defendant Judges and Courts) [*see generally* Dkt. 11]. Plaintiff's claims against the Defendant Court Staff and Clerks seemingly seek to attribute every loss or negative action in the *Amrhein NDTX I* litigation **[*29]** to the federal clerk and/or office for the court in which the action was taken. To the extent the actions or harms alleged resulted from a judicial order or court ruling (e.g., dismissal of the lawsuit, denial of IFP status, or requirement to pay filing fees), the Defendant Court Staff and Clerks are protected by absolute immunity. *Clay, 242 F.3d at 682*. Furthermore, and like with the Defendant Judges and Court, Plaintiff's Amended Complaint lacks sufficient factual allegations to raise a claim upon which relief may be granted against the Defendant Court Staff and Clerks. *See Iqbal, 556 U.S. at 679*. Accordingly, the Court finds that each of Plaintiff's claims against the Defendant Court Staff and Clerks should be dismissed pursuant to *Section 1915(e)(2)(B)(ii)*.

C. Defendant Attorneys and Law Firms

Plaintiff's claims against the Defendant Attorneys and Law Firms are likewise barred by immunity and fail to state a claim upon which relief may be granted. As with the Defendant Court Staff and Clerks, Plaintiff relies on the same conclusory allegations quoted *supra* at Section II.A (against the Defendant Judges and Courts). Plaintiff's claims against each of the Defendant Attorneys and Law Firms relate to the Attorney Defendants' conduct while representing **[*30]** one or more parties in the *Amrhein NDTX I* litigation [*see generally* Dkt. 11]. Plaintiff's claims are each raised against an attorney who represented some other party: Plaintiff

proceeded *pro se* throughout the Northern District of Texas Action.

In Texas, "attorney immunity"—an attorney's defense to claims by non-clients in association with the attorney's actions in representing a client in litigation—is properly characterized as a true immunity from suit, not as a defense to liability. Troice v. Proskauer Rose, L.L.P., 816 F.3d 341, 346 (5th Cir. 2016); Sorey v. Kellett, 849 F.2d 960, 962 (5th Cir. 1988); *see also* Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477, 481-84 (Tex. 2015). The doctrine "'stem[s] from the broad declaration . . . that "attorneys are authorized to practice their profession, to advise their clients and interpose any defense or supposed defense, without making themselves liable for damages."'" Troice, 816 F.3d at 346 (quoting Cantey Hanger, 467 S.W.3d at 481-84 (Tex. 2015)). This doctrine ensures attorneys advocate zealously—"loyal[ly], faithful[ly], and aggressive[ly]"—for their clients. *Id.* (internal quotations omitted). Attorney immunity is necessary "to avoid the inevitable conflict that would arise if [an attorney] were 'forced constantly to balance his own potential exposure against his client's best interest.'" Id. at 483 (quoting Alpert v. Crain, Caton & James, PC, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). As the Texas Supreme Court recently clarified, fraud is no exception to attorney immunity. Cantey Hanger, 467 S.W.3d at 483-84.

Here, as noted *supra* (and as best the **[*31]** Court can discern), Plaintiff raises claims against Defendant Attorneys based solely on action those Defendants took while representing *other parties*. Because Plaintiff alleges acts committed solely during these attorneys' representation of their respective clients, Texas's doctrine of attorney immunity absolutely bars Plaintiff's claims. Troice, 816 F.3d at 345-49 (reversing and remanding for entry of judgment in favor of attorneys based on attorney immunity, where plaintiff asserted claims against counsel for another party in a court action). And again, Plaintiff's bare bones allegations against these Defendants do not muster sufficient facts to support Plaintiff's legal conclusions regarding liability. *See* Iqbal, 556 U.S. at 679. Accordingly, the Court finds that each of Plaintiff's claims against the Defendant Attorneys and Law Firms should be dismissed pursuant to *Section 1915(e)(2)(B)(ii)*.

D. Government Defendants

As noted *supra*, a complaint must contain facts sufficient to establish plausible claims to relief in order to survive under the federal pleading standards. Twombly, 550 U.S. at 555, 570; Iqbal, 556 U.S. at 679; FED. R. CIV. P. 8. When determining whether a complaint states a claim upon which relief may be granted, a court must (1) identify the complaint's conclusory allegations and disregard them, then (2) **[*32]** evaluate the remaining allegations for plausibility. Iqbal, 556 U.S. at 678-80.

In the present case, Plaintiff's Amended Complaint does not proceed past step one. Plaintiff alleges only that she "Reported & Disclosed" to or filed complaints with the various Government Defendants, and seemingly that these "[c]omplaints were met by silence, no assistance, no explanations & 'no remedies'" [Dkt. 11 at 11]. These allegations do not assert any cognizable legal claim and, in any event, provide no factual underpinnings on which to rest such claims. Plaintiff simply fails to allege facts sufficient to state a claim here, as it is unclear to what "complaints" Plaintiff even refers. Accordingly, the Court finds that each of Plaintiff's claims against the Defendant Attorneys and Law Firms should similarly be dismissed pursuant to *Section 1915(e)(2)(B)(ii)*.

CONCLUSION AND RECOMMENDATION

The Court finds first that Plaintiff filed the present lawsuit in violation of the Pre-filing Injunction. The Court further finds that each of Plaintiff's claims against the Northern District of Texas Defendants and Related Defendants are frivolous and malicious, and should be dismissed pursuant to *28 U.S.C. § 1915(e)(2)(B)(i)*. Finally, the Court finds that each of Plaintiff's claims against the Federal **[*33]** Lawsuit Defendants should be dismissed for failure to state a claim upon which relief may be granted, and should be dismissed pursuant to *28 U.S.C. § 1915(e)(2)(B)(ii)*. Based on the foregoing, the Court recommends that Plaintiff's Amended Complaint [Dkt. 11] and each and every of the claims therein be **DISMISSED WITH PREJUDICE**.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. *28 U.S.C. § 636(b)(1)(C)*. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will **[*34]** result from a failure to object. *See*

Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds, 28 U.S.C. § 636(b)(1)* (extending the time to file objections from ten to fourteen days).

SIGNED this 23rd day of June, 2017.

/s/ Christine A. Nowak

Christine A. Nowak

UNITED STATES MAGISTRATE JUDGE

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EXHIBIT H-2

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DARLENE C. AMRHEIN	§	
	§	Civil Action No. 4:16-CV-223
v.	§	(Judge Mazzant/Judge Nowak)
	§	
UNITED STATES OF AMERICA, ET AL.		

MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On June 23, 2017, the report of the Magistrate Judge (Dkt. #12) was entered containing proposed findings of fact and recommendations that Plaintiff Darlene C. Amrhein's First Amended Petition/ Pleadings from Original Petition with Stated Claims, Elements, Case Law & Specific Details as the Court Ordered & Pleads for Relief ("Amended Complaint") (Dkt. #11) be dismissed. Having received the report of the Magistrate Judge (Dkt. #12), having considered each of Plaintiff's objections (Dkt. #17), and having conducted a de novo review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Court hereby adopts the Magistrate Judge's report (Dkt. #12) as the findings and conclusions of the Court.

BACKGROUND

The underlying facts are set out in further detail by the Magistrate Judge and need not be repeated here in their entirety (*see* Dkt. #12). Accordingly, the Court sets forth herein only those facts pertinent to Plaintiff's objections.

Plaintiff filed this lawsuit on March 31, 2016, and contemporaneously filed a Motion for Leave to Proceed *In Forma Pauperis* (Dkt. #4). The Court provisionally granted the Motion and ordered Plaintiff to file an amended complaint setting forth "(1) [t]he basis for this Court's

jurisdiction over this litigation; (2) [e]ach claim/cause of action Plaintiff alleges or intends to allege[,] . . . specifically identify[ing] which claims/causes of action are asserted against which Defendants in this litigation; [and] (3) [t]he specific factual allegations regarding each Defendant for each claim asserted" (Dkt. #6). Plaintiff thereafter filed the Amended Complaint (the live pleading in this matter) on November 15, 2016 (Dkt. #11), naming over 160 defendants, including Plaintiff's previous employer, certain insurance providers, various attorneys, judges, and judicial staff, and numerous governmental entities and agents.

Plaintiff's claims stem from disputes between Plaintiff and her prior employer, La Madeleine, Inc. Plaintiff alleges La Madeleine and its employees mistreated her at work, caused her to suffer on-the-job injuries, and subsequently refused to pay for certain medical procedures Plaintiff attempted to claim under her employee insurance plan, among other things (*see, e.g.*, Dkt. #11 at 1, 6-7, 11-13, 20, 29 (asserting claims against La Madeleine, Inc., other employees who worked with Plaintiff, and other entities allegedly associated with La Madeleine, Inc.)). Plaintiff raises claims related to the purported denial of insurance against certain insurance companies and their agents, as well as against certain physicians. Plaintiff asserts each of these persons and entities worked to deprive her of insurance benefits guaranteed through her employer (*see, e.g.*, Dkt. #11 at 1-3, 6-7, 11-13). Additionally, Plaintiff makes various allegations against lawyers, judges, and court staff associated with the 1996 state court litigation she initiated on these same claims and prosecuted unsuccessfully (through numerous appeals) for years (*see* Dkt. #11, Exhibits 18-24, 26-34,37-38). *See also, e.g.*, *Amrhein v. La Madeleine, Inc.* (*Amrhein State*), No. 06-12-00107-CV, 2013 WL 839227, at *1 (Tex. App.—Texarkana, Mar. 6, 2013, pet. denied) (the state court case and appeals thereon are hereinafter and collectively referred to as the "*Amrhein State* litigation").

In the *Amrhein State* litigation, Plaintiff "initially sued La Madeleine, Inc., for failing to provide a safe workplace, alleging primarily that she developed carpal tunnel syndrome from the repetitive motion of tossing or mixing salads over a period of less than five months." *Amrhein State*, 2013 WL 839227, at *1. After Plaintiff lost in the trial court (and following numerous appeals and remands), Plaintiff raised a vast number of issues on appeal related to what Plaintiff perceived as improper court procedure and treatment of her claims in the trial court (*see* Dkt. #12 at 3 (citing *Amrhein State*, 2013 WL 839227, at *1-2)). The state appeals court affirmed the trial court's dismissal of Plaintiff's claims, specifically noting Plaintiff's "incomprehensible" briefing could "accurately be described as a fifty-page denunciation of perceived slights by the legal system and [Plaintiff's] belief that because she has not prevailed, the system has treated her unfairly at every turn." *Amrhein State*, 2013 WL 839227, at *2. The Texas Supreme Court denied review on February 7, 2014. Prior to the Texas Supreme Court's denial through April 22, 2014, when the lower appeals court denied Plaintiff's final motion, Plaintiff repeatedly filed for reconsideration before both the lower appeals court and the Texas Supreme Court. *See* Case record in Texas Court of Appeals Case No. 06-12-00107-CV.

On August 16, 2011, while the *Amrhein State* litigation was ongoing, Plaintiff filed suit in the United States District Court for the Eastern District of Texas; the Court transferred Plaintiff's case to the Northern District of Texas on August 26, 2011. *See Amrhein v. La Madeleine, Inc.* (*Amrhein NDTX I*), No. 3:11-CV-02440-P, 2012 WL 12840376, (N.D. Tex. Dec. 21, 2012), *aff'd*, 589 F. App'x 258 (5th Cir. 2015) (per curiam) (the proceedings before the Northern District of Texas and subsequent appeal to the Fifth Circuit are hereinafter referred to as the "*Amrhein NDTX I* litigation"). In the *Amrhein NDTX I* litigation, Plaintiff's "employment dispute" at the center of her claims in the *Amrhein State* litigation "grew into allegations against all branches of government

for the State of Texas[,]" including various judges, their staff, legislators, and executive branch members. *Id.* at *1. Plaintiff also named various attorneys allegedly involved in the *Amrhein State* litigation as defendants in the *Amrhein NDTX I* litigation. *Id.* The Northern District dismissed Plaintiff's claims with prejudice, finding Plaintiff had failed to state a claim upon which relief could be granted. *See id.* at *3-4.

In the instant action, Plaintiff now raises for the third time all of the same claims she raised in the *Amrhein NDTX I* litigation, and has appended claims against every member of the judiciary remotely associated with the *Amrhein NDTX I* litigation, as well as their staff and any attorney representing other parties to that litigation (*see, e.g.*, Dkt. #11 at 1-4, 8-10). Further, Plaintiff attempts to raise claims against various members of Congress, the federal executive branch, and every justice of the United States Supreme Court (*see, e.g.*, Dkt. #11 at 9-10). Specifically, Plaintiff raises the same claims of conspiracies, frauds, and biased judges who worked with attorneys representing other parties (as well as many entities and members of the federal and Texas state governments) to deny her fair proceedings and to cause her damages as a result. These claims, which Texas state courts and the Northern District of Texas court have in large part already considered and dismissed, are now before the Court for screening pursuant to 28 U.S.C. § 1915(e) ("Section 1915"). For ease of reference, the Court adopts the Magistrate Judge's grouping of Defendants (more fully identified in the margin) into three primary sets, namely: (1) the Northern

District of Texas Defendants;[1] (2) the Related Defendants;[2] and (3) the Federal Lawsuit Defendants.[3] (To the extent the Court has inadvertently omitted any named defendant in the lists

[1] In the *Amrhein NDTX I* litigation, Plaintiff named the following entities and persons, alleging each was directly or indirectly involved in the employment-related matters or engaged in some misconduct or bias in adjudicating or litigating the underlying state actions: La Madeleine, Inc., State Bar of Texas; Governor Rick Perry, Texas Attorney General (then Gregg Abbott), Texas Secretary of State (then Hope Andrade), the Texas State Legislature, Dallas County, John F. Warren (County Clerk and Records), Dallas Texas Courts & Judges (specifically, County Court at Law No. 3, Judge Sally Montgomery, County Court at Law No. 1, Judge D'Metria Benson, and Judge Ted Akin, as well as "All Court[s] & Judges" in the George L. Allen Building), the Regional Administrative Court, Judge John Ovard, the County Court at Law Fifth District of Texas, the Supreme Court of Texas, Attorney Jerry Fazio, Owen & Fazio Law Firm, Attorney Brent Cornwell, Attorney Robert Clarkson, Judge Jack Pierce, Judge Russell Roden, Judge Robert Jenevein, Union Security Insurance Company, Michelle Falen, the Texas Department of Insurance, and the Texas Insurance Commissioner. These defendants are hereinafter and collectively referred to as "the Northern District of Texas Defendants." Plaintiff already pursued claims against each of these defendants in the *Amrhein NDTX I* litigation, wherein all defendants were dismissed.

[2] Plaintiff names the following entities and persons in the Amended Complaint, alleging each was directly or indirectly involved in the employment-related matters or engaged in some misconduct or bias in adjudicating or litigating the underlying state actions: La Madeleine of Texas, Inc., La Madeleine, de Corps, Inc., Groupe Le Duffe, Inc., Patrick Leon Esquerre (Founder, Owner, Advisor & Seller), Mr. John Corcoran (President/CEO), John Cahill (President), Duncan Davis (Vice President), Wallace B. Doolin (CEO), Fortis Benefits Insurance Company & Agents, Assurant Employee Benefits, Occupational Health (La Madeleine Company Healthcare Provider), Dr. John Touhey (Company Physician & Reporting Agent), Gwynn Carver, M.D. (Company Physician & Drug Testing), Mark S. Hutzel (La Madeleine Operations & Direct Manager), Karen Gentry (La Madeleine Employee & Supervisor), Sharon Crane (La Madeleine Employee & Long Term Disability Insurance), Steve Roos (La Madeleine Employee Corporate Office), "Other La Madeleine Employees Witnesses – Becky, Monique, Judith, Carlos, et al.," Essilor Vision Foundation, Esquerre Enterprises, Le Madeleine (Florida) Inc., La Madeleine Boca Raton, The Wine Gourmet, Inc., Holder Services, Inc., LMI Investment #1 Company LTD, Esquerre Property Company LTD, Attorney John Owen, Attorney Tracy Stoker, Dodge, Fazio, Anderson & Jones, Attorney Jason Kipness, Kipness Law Firm, Attorney S. Russell Headrick, Lathrop & Gage, LLP, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., Attorney Erika M. Kane, Attorney Peter Harlan, Attorney Michael James Patterson, Attorney Cynthia Canfield Hamilton, Attorney Susan Farris, Law Offices of Gallerson & Yates, Vincent, Sarafino, Geary, Waddell & Jenevein, Attorney David R. Gibson, The Gibson Group, Judge Mark Greenberg, Attorney Michael R. Snipes (Retired Judge), Broden, Mickelsen, Helms, & Snipes LLP, Judge Bill F. Coker, Judge Tom Fuller, Judge Mary Murphy, Bailiff Gary Christensen, Dallas Sheriff's Department Lt. Dohmann, Dallas County Sheriff Department Lupe Valdez, Dallas County Internal Affairs/Bailiffs, Lt. B. Terrell Internal Affairs Dallas Sheriff's Department, Cheryl Duncan (Transcription Reporter), Cayse Coskey (Court Reporter), Richard Rhode (Court Reporter), Fawn Cave (Court Reporter), Denise Jay (Court Reporter), Veronica Hood, Aneesah Anderson, Court Chief Deputy Claudia McCoy, Court Clerk Lisa Matz, Fifth District Court of Appeals at Dallas, Justice Joseph Morris, Justice Mark Whittington, Justice Michael O'Neill, Justice Carolyn Wright, Justice Elizabeth Lang-Miers, Justice Martin Richter, Justice Douglas Lang, Justice Linda Thomas, Justice David Bridges, Justice Kerry P. Fitzgerald, Sixth District Court of Appeals at Texarkana, Justice Josh R. Morriss III, Justice Jack Carter, and Justice Bailey Moseley. These defendants are hereinafter and collectively referred to as "the Related Defendants." Plaintiff raises claims against each of these defendants related to the same underlying facts as were raised in *Amrhein NDTX I* and, as best the Court can tell, does so for the first time in the present case.

[3] Plaintiff also names the following entities and persons in the Amended Complaint, alleging that each was either directly or indirectly involved in and acting unlawfully with regard to the *Amrhein NDTX I* litigation: United States District Court for the Eastern District of Texas ("Judge Don Bush Venue Transfer 2011"), United States Northern District Court, Judge Jorge Solis, Magistrate Judge Renee Toliver, Judge A. Joe Fish, Clerk of Court Karen Mitchell (Northern District), Chief Judge Carl E. Stewart, Shelly Saltzman (Fifth Circuit), United States Court of Appeals Fifth Circuit, Judge Thomas Reavely, Judge Leslie H. Southwick, Judge James L. Dennis, Clerk of Court Lyle W. Cayce, United States Supreme Court & Justices; Justice Sonia Maria Sotomayor; Justice Stephen Gerald Breyer; Justice Samuel Anthony Alito, Jr.; Justice Elena Kagan; Justice Clarence Thomas; Justice Antonin Gregory Scalia (Deceased); Justice Anthony McLeod Kennedy; Justice Ruth Joan Bader Ginsburg; Chief Justice John G. Roberts;

included herein, the Court clarifies that this Memorandum Adopting Report and Recommendation of United States Magistrate Judge addresses *all* named defendants and *all* claims raised by Plaintiff in her Amended Complaint.)

The Magistrate Judge also noted and the Court reiterates here Plaintiff's prior litigation history: she has filed more than six suits before numerous Texas state and federal courts (including this one), and courts have dismissed each of these cases for frivolousness and/or for failure to comply with basic pleading or procedural requirements. *See, e.g.*, *Amrhein State*, 2013 WL 839227; *Amrhein NDTX I*, 2012 WL 12840376; *Balistreri v. Remax Realty*, No. 05-10-00611-CV, 2011 WL 149984, at *1 (Tex. App.—Dallas Jan. 19, 2011) (pet. denied); *Balistreri-Amrhein v. AHI*, No. 05-09-01377-CV, 2012 WL 3100775, at *1 (Tex. App.—Dallas July 6, 2011) (pet denied); *Amrhein-Macon v. Wood*, No. 2-05-158-CV, 2005 WL 1654762, at *1 (Tex. App.—Fort Worth July 14, 2005) (pet. denied); *Amrhein v. Riechert*, No. 3:12-CV-03707-G-BK, 2013 WL 1155473, at *13-14 (N.D. Tex. Feb. 1, 2013), *report and recommendation adopted*, No. 3:12-CV-3707-G BK, 2013 WL 1174571 (N.D. Tex. Mar. 21, 2013) (*Amrhein NDTX II*); *Balistreri-Amrhein v. Verrilli*, No. 4:16-CV-112, 2017 WL 726919, at *1 (E.D. Tex. Feb. 24, 2017). After reviewing these prior cases, the Court concurs with the Magistrate Judge's observation that, in each of these

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Clerk Advisor Jacob C. Travers; Supreme Court Clerks Scott S. Harris and James Atkinson, United States of America; President Barack Hussein Obama, Vice President Joseph Biden, United States Solicitor General Donald B. Verilli, Jr., United States Attorney General Loretta Elizabeth Lynch, United States Department of Justice, U.S. Attorney's Office for the Northern District of Texas; John R. Parker (Northern District); Malcolm Bales (U.S. Attorney's Office); Federal Bureau of Investigation; FBI Director James B. Comey; United States Senate Judiciary Committee; Judiciary Senate Chairman Charles E. "Chuck" Grassley, United States House Judiciary Committee; Judiciary House Chairman Robert Bob Goodlatte; Ted Cruz (U.S. Senator and Senate Judicial Chairman), John Cornyn (U.S. Senator and Senate Judicial Committee); United States Senate (114th Congress), United States House (114th Congress); Administrative Office of United States Courts, Office of General Counsel, United States Attorneys Office (Malcolm Bales), Texas Office of Court Administration, Dan Patrick (Texas Lt. Governor), Texas Ethics Commission, Texas Workers Compensation Division, Robert Shipe & Richard F. Reynolds, Texas Senate; Texas Senate Members, City of Dallas, Mayor of Dallas Mike Rawlings, Dallas County Judge Clay Jenkins, Dallas City Hall, Dallas County District Attorney's Office (Susan Hawk), and Dallas City Council & Members. These defendants are hereinafter and collectively referred to as "the Federal Lawsuit Defendants." Plaintiff attempts to raise claims against each of these defendants that are in some manner related to the *Amrhein NDTX I* litigation.

cases, Plaintiff "has filed flurries of largely incomprehensible motions, letters, and other requests for relief both prior to and following the respective court's disposition of her claims" and that courts have previously admonished Plaintiff for such behavior (Dkt. #12 at 6). Indeed, as a result of Plaintiff's contumacious filing conduct in a case before the Northern District, the Northern District Court found entry of a broad pre-filing injunction appropriate:

> **Darlene Amrhein is prohibited from filing any new civil action in any United States district court** unless she first files a motion requesting leave of court to do so and attaches thereto copies of (1) her proposed complaint, (2) the magistrate judge's findings, conclusions and recommendation in this case, (3) this court's order accepting the findings, conclusions and recommendation of the United States Magistrate Judge, and (4) the judgment in this case.

Amrhein NDTX II, 2013 WL 1155473, at *13-14; *report and recommendation adopted*, No. 3:12-CV-3707-G BK, 2013 WL 1174571 (N.D. Tex. Mar. 21, 2013) (hereinafter the "Pre-Filing Injunction"). This Court has also recently examined Plaintiff's prolific filing history and Plaintiff's continued failure to comply with the Northern District of Texas Pre-Filing Injunction. *See Balistreri-Amrhein*, No. 4:16-cv-112, 2017 WL 726919, at *5-6 (E.D. Tex. Feb. 24, 2017) (hereinafter "*Amrhein EDTX I*").

Following review of Plaintiff's litigation history and screening the instant claims under Section 1915, the Magistrate Judge entered a report and recommendation on June 23, 2017 (Dkt. #12), recommending Plaintiff's claims be dismissed with prejudice. On July 21, 2017, Plaintiff filed Plaintiff's 108 Objections & Points of Error for "Good Cause" Reasons to Deny June 23, 2017 Report & Recommendations to Dismiss this Lawsuit (Dkt. #17).

OBJECTIONS

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2)-(3). As a

threshold matter, the Court notes Plaintiff's objections (more than twenty pages in excess of the Court's eight-page limit) seemingly take issue with the entirety of the Magistrate Judge's findings and recommendations. Moreover, a number of Plaintiff's objections are duplicative of one another and repetitive of the allegations in the Amended Complaint. After reviewing Plaintiff's filing under the relaxed pleading standard afforded *pro se* litigants, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), the Court discerns that Plaintiff objects specifically to the Magistrate Judge's use of Section 1915: (a) to screen the Amended Complaint and recommend dismissal with prejudice of Plaintiff's claims without ordering service of process; (b) to find that Plaintiff's claims against the Northern District of Texas Defendants and Related Defendants should be dismissed with prejudice; and (c) to find that Plaintiff's claims against the Federal Lawsuit Defendants should be dismissed with prejudice (*see, e.g.*, Dkt. #17 at 2, 5, 7, 30).

Plaintiff primarily objects to the Magistrate Judge's use of Section 1915 to screen the Amended Complaint because: (a) Plaintiff is not a prisoner; and (b) Plaintiff believes the Court must "send summons for an indigent person for free" (Dkt. #17 at 2, 5). Plaintiff further contends that the Magistrate Judge erred in recommending Plaintiff's claims against each of the groups of Defendants be dismissed with prejudice (*e.g.*, Dkt. #17 at 5, 7-14).

A. Application of Section 1915

District courts have authority under Section 1915 to dismiss a complaint *sua sponte* where the complaint "[1] is frivolous or malicious; [2] fails to state a claim on which relief may be granted; or [3] seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997); *Kenechukwu v. Holder*, No. 9:15-CV-62, 2016 WL 3961714, at *1-2 (E.D. Tex. June 10, 2016), *report and recommendation adopted*, 2016 WL 3926576 (E.D. Tex. July 21, 2016). A court may

dismiss a complaint under this standard "if it lacks an arguable basis in law or fact." *Siglar*, 112 F.3d at 193; *see Moore v. Mabus*, 976 F.2d 268, 269-70 (5th Cir. 1992) (explaining the distinction between factual and legal frivolousness in *in forma pauperis* complaints). Although courts construe *pro se* filings liberally in this context, *see, e.g.*, *Flanagan v. LaGrone*, No. 9:16-CV-59-MHS, 2016 WL 4163557, at *1 (E.D. Tex. July 6, 2016), *report and recommendation adopted*, 2016 WL 4140751 (E.D. Tex. Aug. 3, 2016), dismissal is appropriate where the claims have no chance of success, *cf. Booker v. Koonce*, 2 F.3d 114, 115-16 (5th Cir. 1993) (noting dismissal of claims with "some chance" of success is inappropriate at screening stage but affirming dismissal where *pro se* plaintiff's claim "[was] based upon an indisputably meritless legal theory").

Moreover, "[t]he statute applies equally to prisoner and non-prisoner cases." *Kenechukwu*, 2016 WL 3961714, at *1-2 (citing *Newsome v. E.E.O.C.*, 301 F.3d 227, 231 (5th Cir. 2002) (per curiam) (applying Section 1915 to non-prisoner *pro se* litigant)); *see, e.g.*, *Booker*, 2 F.3d at 115 (applying Section 1915 to non-prisoner, former arrestee who claimed wrongful arrest and affirming dismissal under Section 1915); *Patel v. United Airlines*, 620 F. App'x 352 (5th Cir. 2015) (per curiam) (applying Section 1915 to non-prisoner *pro se* litigant); *James v. Richardson*, 344 F. App'x 982, 983 (5th Cir. 2009) (per curiam) ("Section 1915(e)(2)(B) requires dismissal of frivolous IFP actions even if those actions are brought by non-prisoner plaintiffs."); *Walters v. Scott*, No. H–14–1637, 2014 WL 5878494, at *1 (S.D. Tex. Nov. 11, 2014) ("Section 1915(e)(2)(B) applies equally to prisoner and non-prisoner *in forma pauperis* cases."); *Sanchez v. Waguespack*, No. 09-6130, 2010 WL 1727836, at *2 (E.D. La. Mar. 31, 2010) (same); *Hamilton v. Landmark of Richardson*, No. 3–02–CV–2681–K, 2003 WL 131722, at *1 n.1 (N.D. Tex. Jan. 8, 2003) (same); *Haqq v. Tex. Dep't of Hum. Servs.*, No. EP-07-CA-0156-FM, 2007 WL 1958611, at *1 (W.D. Tex. June 29, 2007) ("Section 1915(e)(2)(B) applies to both prisoner and non-prisoner

in forma pauperis cases."); *cf. Haynes v. Scott*, 116 F.3d 137, 139-40 (5th Cir. 1997) (interpreting Section 1915 and determining sections using either or both nouns "persons" and "prisoners" applied to non-prisoners and prisoners, while sections using only noun "prisoner" applied only to prisoners); 28 U.S.C. § 1915(e)(1)-(2) (using the term "person," not "prisoner"). The Court finds in accord with these authorities that Section 1915(c)(2)(B) applies to non-prisoners and prisoners alike. *See Amrhein EDTX I*, 2017 WL 726919, at *3-4 (considering the same objection by Plaintiff in another case before the Court).

Further, courts appropriately dismiss claims with prejudice under Section 1915(e)(2)(B) in certain circumstances. *See Shabazz v. Franklin*, 380 F. Supp. 2d 793, 802 (N.D. Tex. 2005) (citing *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992), and *Marts v. Hines*, 117 F.3d 1504, 1505 (5th Cir. 1997) (en banc)). The Fifth Circuit has held that when presented with one of the following situations, a court may dismiss an *in forma pauperis* complaint with prejudice: "(1) 'complaints containing claims which, on their face, were subject to an obvious meritorious defense'; (2) when the plaintiff had been 'given an opportunity to expound on the factual allegations' through a questionnaire or hearing and still 'could not assert a claim with an arguable factual basis'; and (3) 'claims without an arguable basis in law.'" *Shabazz*, 380 F. Supp. 2d at 802-03 (noting this includes "'dismissals as frivolous or malicious' under the IFP screening statute[,]"citing *Marts*, 117 F.3d at 1505, and *United States v. Coscarelli*, 149 F.3d 342, 343 (5th Cir. 1998)). Further, the Fifth Circuit has interpreted the U.S. Supreme Court's decision in *Denton* as follows:

> The rule that the *in limine* dismissals of actions by the district court generally are to be with prejudice particularly fits dismissals under the former 28 U.S.C. § 1915(d), now a part of 28 U.S.C. § 1915(e)(2). Dismissals under the *in forma pauperis* statute are in a class of their own, acting not as dismissals on the merits but, rather, as denials of in *forma pauperis* status. Typically, but not exclusively, such dismissals may serve as *res judicata* for subsequent *in forma pauperis* filings, but they effect no prejudice to the subsequent filing of a fee-paid complaint making the same allegations. Exceptions included complaints containing claims which, on

> their face, were subject to an obvious meritorious defense, or instances in which the plaintiff was given an opportunity to expound on the factual allegations by a *Watson* questionnaire or a *Spears* hearing and could not assert a claim with an arguable factual basis, or claims without an arguable basis in law.
>
> On en banc reconsideration, considering the distinct features of such *in forma pauperis* proceedings, we now hold that dismissals as frivolous or malicious should be deemed to be dismissals with prejudice unless the district court specifically dismisses without prejudice. . . .

Marts, 117 F.3d at 1505-06 (interpreting *Denton*) (footnotes omitted). In light of the Fifth Circuit's clear instruction in *Marts*, the Court finds the Magistrate Judge's recommendations to dismiss with prejudice appropriate.

Plaintiff's objection that the Court improperly withheld service in this matter until completion of screening under Section 1915 also lacks merit. Although Federal Rule of Civil Procedure 4(m) prescribes service of process "within ninety days after the complaint is filed," it also permits a court to toll that period in certain circumstances. *See* Fed. R. Civ. P. 4(m). Relevant here, a court may withhold service where the plaintiff proceeds *in forma pauperis* pending the court's screening of the complaint for frivolousness under Section 1915. *See, e.g.*, *Shabazz*, 380 F. Supp. 2d at 799-800; *Coleman v. Colvin*, No. 3:16-cv-2608-D-BK, 2017 WL 2348812, at *1 (N.D. Tex. Apr. 13, 2017) ("Plaintiff's *pro se* complaint was referred to the United States magistrate judge for judicial screening. The Court granted the motion to proceed *in forma pauperis*, but did not issue process pending preliminary screening."); *cf. Osborne v. Texas*, No. A-13-CV-528-LY, 2013 WL 5556210, at *3 (W.D. Tex. Oct. 8, 2013) (noting courts have a "duty to screen for frivolousness" in certain cases and finding *sua sponte* examination of the merits of a plaintiff's case prior to service proper).[4]

[4] The Court addresses this same issue its previous Order (Dkt. #19) disposing of Plaintiff's Motion to Recuse & Mandatory Disqualifications of Judges Amos Mazzant III & Magistrate Christine Nowak for Timely "Good Cause Reasons" & to Stay this Lawsuit (Dkt. #18).

B. Dismissal of Claims against Northern District of Texas and Related Defendants as Frivolous

The Magistrate Judge found that: (1) "Plaintiff raises the same or substantially similar claims against [the Northern District of Texas and Related Defendants] as Plaintiff raised in the *Amrhein NDTX I* litigation;" and (2) any "new factual allegations/claims are the same clearly baseless types of claims that were dismissed for failure to state a claim in the Northern District" (Dkt. #12 at 13-15). Accordingly, the Magistrate Judge recommended that "each and every one of the claims asserted by Plaintiff against the Northern District of Texas Defendants and the Related Defendants must be dismissed . . . as frivolous and malicious for duplicating her previously dismissed claims" (Dkt. #12 at 13-14). The Court agrees.

Cases "duplicative of a pending or previous lawsuit" are malicious. *Potts v. Texas*, 354 F. App'x 71 (5th Cir. 2009) (per curiam) (citing *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993) and *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988)); *see also McBarron v. Fed. Bureau of Prisons*, 332 F. App'x 961, 963-64 (5th Cir. 2009) (per curiam) ("The majority of . . . claims involved the same general series of events, facts, and conditions that were at issue in an earlier . . . proceeding[] and therefore constituted '[r]epetitious litigation of virtually identical causes of action' that were properly dismissed as malicious."). This is so even where the plaintiff "raise[s] new claims," so long as those claims "grow out of the same allegations" as were presented in the prior or pending suit(s). *Id.*; *see also Potts v. Texas*, No. 1:07-CV-632, 2008 WL 4525007, at *3 (E.D. Tex. Sept. 26, 2008) (finding the addition of new defendants and claims did not merit consideration where "the new factual allegations are the same 'clearly baseless,' 'fanciful,' . . . types of claims that were dismissed as frivolous in [plaintiff's previous cases]"). A court may dismiss a case either as malicious or as frivolous for being duplicative. *See Silva v. Stickney*, No. 3:03-cv-2279-D, 2005 WL 2445433, at *4 (N.D. Tex. Sept. 30, 2005) ("Courts may appropriately

dismiss an *in forma pauperis* action as frivolous, when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff.'" (quoting *Wilson v. Lynaugh*, 878 F.2d 846, 850 (5th Cir. 1989))); *see also Yarborough v. Sheriff, Tarrant Cty.*, Civil Action No. 4:11-cv-207-Y, 2011 WL 4736302, at *1-2 (N.D. Tex, Oct. 5, 2011) (Claims presented that "are duplicative of claims already asserted and dismissed in [a] previous case . . . may be dismissed as frivolous or malicious[,]" or, "[a]lternatively, [because they] are . . . barred by the doctrine of *res judicata*[.]").

Here, Plaintiff's claims and allegations against the Northern District of Texas Defendants and the Related Defendants duplicate the claims Plaintiff previously raised (and the Northern District previously dismissed with prejudice) in the *Amrhein NDTX I* litigation. The *Amrhein NDTX I* litigation revolved around Plaintiff's earlier claims before Texas state courts against her prior employer, La Madeleine, Inc., for alleged workplace wrongs. 2012 WL 12840376. After Plaintiff unsuccessfully litigated against her employer for "over fourteen years" in the state courts, her initial claims against her employer "grew into allegations against all branches of government for the State of Texas" and members of the state judiciary. *Id.* Plaintiff perceived those entities had wronged her throughout the state litigation, and attempted before the Northern District to raise new claims against them. *Id.* To that end, Plaintiff submitted "200 pages of pleadings and supplementary filings" wherein she "vent[ed] general frustration toward the legal process in state court and then—defendant-by-defendant—list[ed] all causes of action she pursue[d] against each entity"; the Northern District found this "litany of claims" did not meet federal pleadings standards and accordingly dismissed Plaintiff's claims with prejudice. *Id.* In the instant case, Plaintiff operates in the same manner—submitting voluminous, rambling briefing listing various statutes

and causes of action[5]—and attempts again to state the same claims on the same allegations as she raised before the Northern District. *Compare Amrhein NDTX I*, Northern District of Texas Case No. 3:11-cv-2440, Dkt. #1, *with* Eastern District of Texas Case No. 4:16-cv-223, Dkt. #12. Plaintiff raises only the same "clearly baseless . . . types of claims that were dismissed as frivolous" in the *Amrhein NDTX I* litigation. *See Potts*, 2008 WL 4525007, at *3. The Court overrules Plaintiff's objection.

C. Dismissal of Claims against Federal Lawsuit Defendants as Frivolous

"A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." *Newsome*, 301 F.3d at 231-32 (finding dismissal of *pro se* litigant's APA claim appropriate under Section 1915 because APA accorded litigant no right to sue EEOC given that EEOC had engaged in no final agency action); *see, e.g.*, *Neitzke*, 490 U.S. at 327-28 ("Examples . . . [include] claims against which it is clear that the defendants are immune from suit, ..."); *Billbrew v. Johnson*, 239 F. App'x 49, 50 (5th Cir. 2007) (per curiam) (affirming dismissal claim of deliberate medical indifference under Section 1915 because "wholly conclusional").

Likewise, claims lack an arguable basis in fact where based upon an "fantastic or delusional scenarios." *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989) (Section 1915 "accords judges . . . the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual allegations are clearly baseless."); *Denton*, 504 U.S. at 32-33 ("[A] court may dismiss a claim as factually frivolous only if the facts alleged are 'clearly baseless,' . . . a category encompassing allegations that are 'fanciful,' . . . 'fantastic,' . . . and 'delusional[.]'"). Though an

[5] The Magistrate Judge noted and the Court observes that "Plaintiff purports to claim recovery through at least thirty different statutes and causes of action . . . [but] asserts no facts in connection with such [authorities]. In most instances she merely lists or includes citations to these statutes and/or causes of action in the body of the Amended Complaint" (Dkt. #12 at 15 n.5).

"initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighed in favor of the plaintiff[,]" a court should consider "judicially noticeable facts" in determining whether the allegations have any basis in fact. *Denton*, 504 U.S. at 32. Indeed, a complaint merits dismissal under Section 1915 where it "appears that no relief could be granted under any set of facts that could be proven consistent with the allegations." *Newsome*, 301 F.3d at 231 (citing *Moore v. Carwell*, 168 F.3d 234, 236 (5th Cir. 1999)).

In the present case, the Magistrate Judge considered each of Plaintiff's allegations with regard to each of the groups of Federal Lawsuit Defendants[6] and found that each should be dismissed pursuant to Section 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted (Dkt. #12 at 16-21). In so finding, the Magistrate Judge determined that immunity barred Plaintiff's claims against each group of the Federal Lawsuit Defendants (*see* Dkt. #12 at 16-18 (finding judicial immunity absolutely bars Plaintiff's claims against the Defendant Judges and Courts), Dkt. #12 at 19 (finding immunity accorded judicial staff when executing court orders or matters of judicial discretion applied to bar Plaintiff's claims against Defendant Court Staff and Clerks), Dkt. #12 at 19-21 (finding the Defendant Attorneys and Law Firms are immune to Plaintiff's claims), Dkt. #12 at 21 (finding Plaintiff's allegations against the Government Defendants conclusory and without any basis in law)). After conducting a de novo review of the Amended Complaint, the Court finds Plaintiff's claims against each of the Federal Lawsuit Defendants should be dismissed with prejudice. Plaintiff's claims against the Defendant Judges and Courts clearly are barred by immunity given that neither the allegations (nor the objections) demonstrate that any of the Defendant Judges and Courts "acted in the 'clear absence of all

[6] The Magistrate Judge defines the following groups of Federal Lawsuit Defendants: (1) Defendant Judges and Courts, (2) Defendant Court Staff and Clerks, (3) Defendant Attorneys and Law Firms, and (4) Government Defendants (Dkt. #12 at 16).

jurisdiction'" in any of the relevant proceedings. *See, e.g.*, *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1978). Plaintiff's claims against the Defendant Court Staff and Clerks are clearly barred by immunity, as well, because neither the allegations nor the objections show that any of the Defendant Court Staff and Clerks acted other than as they were "specifically required to do under court order or at a judge's discretion." *See, e.g.*, *Clay v. Allen*, 242 F.3d 679, 682 (5th Circ. 2001) (per curiam) (citing *Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981)). Likewise, each of the Defendant Attorneys and Law Firms—none of whom represented Plaintiff in any of the relevant proceedings—has absolute immunity to Plaintiff's claims expounded in the Amended Complaint, which alleges only "conduct [that] was 'the kind of conduct in which an attorney engages when discharging . . . duties to [a] client.'" *See, e.g.*, *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346-49 (5th Cir. 2016). Finally, with regard to the Government Defendants, it "appears that no relief could be granted under any set of facts that could be proven consistent with the allegations[,]" *Newsome*, 301 F.3d at 231. Plaintiff asserts only that the Government Defendants have failed to assist, explain, remedy, or otherwise respond to complaints Plaintiff has "Reported & Disclosed" to them (*e.g.*, Dkt. #11 at 11). Plaintiff's complaints against the Government Defendants accordingly lack an arguable basis in law. The Court finds Plaintiff's claims against each and every of the Federal Lawsuit Defendants should be dismissed with prejudice. Accordingly, the Court overrules Plaintiff's objection.

CONCLUSION

Having considered each of Plaintiff's objections (Dkt. #17) and having conducted a de novo review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report (Dkt. #12) as the findings and conclusions of the Court.

Accordingly, it is **ORDERED** that Plaintiff's First Amended Petition / Pleadings from Original Petition with Stated Claims, Elements, Case Law & Specific Details as the Court Ordered & Pleads for Relief (Dkt. #11) be **DISMISSED**, and that each and every of Plaintiff's claims be **DISMISSED** with prejudice.

All relief not previously granted is **DENIED**.

The Clerk is directed to **CLOSE** this civil action.

IT IS SO ORDERED.

SIGNED this 6th day of September, 2017.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

Exhibit I

Page 1

1 CAUSE NO. 417-05352-2016

2 DARLENE C. AMRHEIN,) IN THE DISTRICT COURT
3 Plaintiff,)
4)
vs.)
5) COLLIN COUNTY, TEXAS
PROSPERITY BANK, JO'EL DOE,)
6 KEENA CLIFTON, and NAOMI)
THAMES,)
7 Defendants.) 417TH JUDICIAL DISTRICT
8
9
10 ORAL VIDEOTAPED DEPOSITION OF
11 DARLENE AMRHEIN
12 October 27, 2017
13
14
15
16 ORAL DEPOSITION of DARLENE AMRHEIN,
17 produced as a witness at the instance of the
18 Defendants, and duly sworn, was taken in the
19 above-styled and numbered cause on October 27, 2017,
20 from 9:00 a.m. to 5:09 p.m., before Jeff L. Foster, CSR
21 in and for the State of Texas, reported by machine
22 shorthand, at the Collin County Courthouse, 417th
23 District Court, 2100 Bloomdale Road, McKinney, Texas
24 75071, pursuant to the Texas Rules of Civil Procedure
25 and the provisions stated on the record.

Page 2

1 APPEARANCES
2
3 FOR THE PLAINTIFF:
4 Ms. Darlene Amrhein (Appearing pro se)
5 112 Winsley Circle
McKinney, Texas 75071
6 winsley112@yahoo.com
7 FOR THE DEFENDANTS:
8 Ms. Mary Michelle Mahony
MUSKAT, MAHONY, DEVINE & MOSES, LLP
9 1201 Louisiana, Suite 850
Houston, Texas 77002
10 (713) 987-7850
mmahony@mmdmlaw.com
11 ALSO APPEARING:
12 Mr. Billy Gonzales, videographer
13 Ms. Jessica Freedson
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1 **then came back.**
2 Q. And you did all of this in 45 minutes?
3 **A. Yes. Because I rushed back, because I knew**
4 **you wanted --**
5 MS. MAHONY: Objection, nonresponsive to
6 the last part of that.
7 Q. (BY MS. MAHONY) Are you currently employed,
8 Ms. Amrhein?
9 **A. No.**
10 Q. Okay. I looked at your LinkedIn page and you
11 indicate on there that you're an independent legal
12 services professional. What does that mean?
13 **A. That means I'm interested in legal. That's**
14 **it. I don't work for anyone.**
15 Q. What do you do as an independent legal
16 services professional?
17 **A. Research. That's it.**
18 Q. Research for whom?
19 **A. For myself.**
20 Q. And as a litigant for yourself?
21 **A. No, not necessarily. It's just I have an**
22 **interest in law.**
23 Q. So you just research the law, because you like
24 to research?
25 **A. Pretty much.**

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1 Q. How many active lawsuits are you involved in
2 right now?
3 **A. I object to that question. It's not relevant.**
4 MS. MAHONY: Certify the question.
5 Q. (BY MS. MAHONY) Do you currently have any
6 bankruptcies pending right now?
7 **A. No.**
8 Q. Would it surprise you to know that you've
9 filed 18 federal court cases since 1986?
10 **A. I object to the question. That's -- the form**
11 **of the question and it has no relevance to this**
12 **lawsuit.**
13 MS. MAHONY: Certify the question.
14 Q. (BY MS. MAHONY) Would it surprise you that
15 since 1991 you've had ten cases filed in Collin County?
16 **A. I object to the form of the question. It has**
17 **no relevance to Prosperity Bank and it's irrelevant.**
18 Q. Okay. Ms. Amrhein, would it surprise that you
19 have three appeals before the Fifth Circuit all of
20 which have been denied since 2000?
21 **A. I object to the form of the question. I**
22 **object to the question as it has no relevance to the**
23 **Prosperity Bank case.**
24 MS. MAHONY: Certify the question and
25 improper objection to all of the foregoing.

1 Q. (BY MS. MAHONY) Ms. Amrhein, have you ever
2 sued another employer that you worked for other than
3 Prosperity Bank?
4 **A. I object to the form of the question. I**
5 **object because it goes beyond the scope of discovery.**
6 **It's confidential information and it's unnecessary and**
7 **will not lead to anything.**
8 MS. MAHONY: Certify the question. And,
9 Ms. Amrhein, I will -- if you have an objection, your
10 objection is to form and to form only. Please refrain
11 from rambling objections.
12 Q. (BY MS. MAHONY) Have you ever sued a former
13 employer for discrimination?
14 **A. I object to the form of the question. I**
15 **object to it because --**
16 Q. That is -- that is all that you can object to.
17 **A. So I'm only allowed one objection?**
18 MS. MAHONY: Certify the question.
19 Q. (BY MS. MAHONY) Have you ever sued a former
20 employer for discrimination?
21 **A. I object to the form of the question.**

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4 **A.**
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18 **A.**
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21 **that**

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1 CHANGES AND SIGNATURE
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1 I, DARLENE AMRHEIN, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.
4
5
6 DARLENE AMRHEIN
7
8
9
10 THE STATE OF _____)
11 COUNTY OF _____)
12 Before me, _____, on this
13 day personally appeared DARLENE AMRHEIN, known to me
14 (or proved to me under oath or through
15 _____) (description of identity card or
16 other document) to be the person whose name is
17 subscribed to the foregoing instrument and acknowledged
18 to me that they executed the same for the purposes and
19 consideration therein expressed.
20 Given under my hand and seal of office
21 this _____ day of _____, 2017.
22
23 NOTARY PUBLIC IN AND FOR
24 THE STATE OF
25 MY COMMISSION EXPIRES:

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1 CAUSE NO. 417-05352-2016
2 DARLENE C. AMRHEIN,) IN THE DISTRICT COURT
3 Plaintiff,)
4 vs.) COLLIN COUNTY, TEXAS
5 PROSPERITY BANK, JO'EL DOE,)
6 KEENA CLIFTON, and NAOMI)
THAMES,)
7 Defendants.) 417TH JUDICIAL DISTRICT
8 REPORTER'S CERTIFICATION
9 DEPOSITION OF DARLENE AMRHEIN
October 27, 2017
10 I, Jeff L. Foster, Certified Shorthand
11 Reporter in and for the State of Texas, do hereby
12 certify to the following:
13 That the witness, DARLENE AMRHEIN, was duly
14 sworn by the officer and that the transcript of the
15 oral deposition is a true record of the testimony given
16 by the witness;
17 That the deposition transcript was submitted
18 on ___, 2017, to the witness or to the
19 attorney for the witness for examination, signature and
20 return to me in 20 days pursuant to Rule 203.1(b) or
21 agreement;
22 That the amount of time used by each party at
23 the deposition is as follows:
24 Ms. Mahony - 6 hours, 42 minutes
25 That pursuant to the information given to the

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1 deposition officer at the time said testimony was
2 taken, the following includes counsel for all parties
3 of record:
4 FOR THE PLAINTIFF:
5 Ms. Darlene Amrhein (Appearing pro se)
112 Winsley Circle
McKinney, Texas 75071
6
7 FOR THE DEFENDANTS:
Ms. Mary Michelle Mahony
8 MUSKAT, MAHONY, DEVINE & MOSES, LLP
1201 Louisiana, Suite 850
Houston, Texas 77002
9 (713) 987-7850
10 I further certify that I am neither counsel
11 for, related to, nor employed by any of the parties or
12 attorneys in the action in which this proceeding was
13 taken, and further that I am not financially or
14 otherwise interested in the outcome of the action.
15 Further certification requirements pursuant to
16 Rule 203 of TRCP will be certified to after they have
17 occurred.
18 Certified to by me this 14th day of November,2017.
19
20
21
22 Jeff L. Foster, CSR, RMR, CRR
Texas CSR No. 5434
23 Expiration Date: 12/31/2018
Lexitas Firm Registration No. 459
24 6500 Greenville Avenue, Suite 445
Dallas, Texas 75206
25 (214) 373-4977

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP
2 The original deposition/signature page was/was
3 not returned to the deposition officer on
4 _____;
5 If returned, the attached Changes and Signature
6 page contains any changes and the reasons therefor;
7 If returned, the original deposition was delivered
8 to Ms. Mary Mahony, Custodial Attorney;
9 That $ _____ is the deposition officer's
10 charges to the Defendants for preparing the original
11 deposition transcript and any copies of exhibits;
12 That the deposition was delivered in accordance
13 with Rule 203.3, and that a copy of this certificate
14 was served on all parties shown herein on
15 _____ and filed with the Clerk.
16 Certified to by me this _____ day of
17 _____, _____.
18
19
20
21 _____
22 Jeff L. Foster, CSR, RMR, CRR
Texas CSR No. 5434
Expiration Date: 12/31/2018
23 Lexitas Firm Registration No. 459
6500 Greenville Avenue, Suite 445
24 Dallas, Texas 75206
(214) 373-4977
25

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Stacey Kemp County Clerk
Collin County, Texas
By: Dianna Shine, Deputy
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CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al,	COUNTY COURT AT LAW
Plaintiffs,	NO. 5
v.	[Hon. Dan K. Wilson]
ATTORNEY LENNIE F. BOLLINGER, AND WORMINTON & BOLLINGER LAW FIRM,	
Defendants.	COLLIN COUNTY, TEXAS

DEFENDANTS' SUPPLEMENT TO THEIR MOTION FOR AN ORDER DETERMING PLAINTIFF DARLENE AMRHEIN TO BE A VEXATIOUS LITIGANT AND REQUESTING SECURITY

Defendants Lennie F. Bollinger and Wormington Law Group, PLLC d/b/a Wormington and Bollinger (incorrectly named as "Wormington & Bollinger Law Firm") ("Defendants") file the attached Affidavit of Carrie Johnson Phaneuf as Exhibit "J", to supplement their Motion for an Order Determining that Plaintiff Darlene Amrhein ("Plaintiff" or "Amrhein") is a Vexatious Litigant, and requesting security, pursuant to the provisions of Chapter 11 of the Texas Civil Practice & Remedies Code.

Exhibit J, attached hereto and adopted by reference as if fully set forth herein, is filed in support of Defendants' pending request for Plaintiff to post security in connection with the relief requested pursuant to their Motion to Declare Plaintiff Darlene C. Amrhein a Vexatious Litigant and Requesting Security.

Specifically, Defendants request the Court enter an order requiring Plaintiff to furnish security for the benefit of Defendants in the amount of **$140,000.00** in accordance with Texas Civil Practice & Remedies Code §11.0055.

As set forth in Exhibit J, the amount of $140,000.00 constitutes Defendants' reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by Plaintiff, including costs and attorneys' fees.

WHEREFORE, PREMISES CONSIDERED, Defendants Lennie F. Bollinger and Wormington & Bollinger, respectfully request that the Court:

(1) immediately stay this litigation pursuant to Tex. Civ. Prac. & Rem. Code § 11.052;

(2) set the foregoing motion for hearing with notice to all parties pursuant to Tex. Civ. Prac. & Rem. Code § 11.053;

(3) sign and enter an order declaring Plaintiff Amrhein a vexatious litigant pursuant to Tex. Civ. Prac. & Rem. Code § 11.054 and requiring Plaintiff to furnish security in accord with Tex. Civ. Prac. & Rem. Code § 11.055.

Defendants also request such other and further relief to which they may show themselves justly entitled both at law and in equity.

Respectfully submitted,

By: */s/ Carrie J. Phaneuf*

CARRIE JOHNSON PHANEUF
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cphaneuf@cobbmartinez.com
JENNIFER SMILEY
Texas Bar No. 24082004
jsmiley@cobbmartinez.com

COBB MARTINEZ WOODWARD PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
Phone: 214.220.5201
Facsimile: 214.220.5251
ATTORNEYS FOR LENNIE F. BOLLINGER AND WORMINGTON & BOLLINGER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to Darlene Amrhein, *pro se*, by via electronic service through FileTime, e-mail, and priority mail on February 12, 2018.

Darlene Amrhein
112 Winsley Circle
McKinney, Texas 75071
Winsley112@yahoo.com

/s/ Carrie Johnson Phaneuf
CARRIE PHANEUF

EXHIBIT J

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al,	COUNTY COURT AT LAW
Plaintiffs,	NO. 5
v.	[Hon. Dan K. Wilson]
ATTORNEY LENNIE F. BOLLINGER, AND WORMINTON & BOLLINGER LAW FIRM,	
Defendants.	COLLIN COUNTY, TEXAS

AFFIDAVIT OF CARRIE JOHNSON PHANEUF

STATE OF TEXAS
DALLAS COUNTY

Before me, the undersigned notary, on this day personally appeared Carrie Johnson Phaneuf, the affiant, who, being by me duly sworn, on oath testified as follows:

1. "My name is Carrie Johnson Phaneuf. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

2. This affidavit is filed in connection with Defendants Lennie F. Bollinger and Wormington Law Group, PLLC d/b/a Wormington and Bollinger's (incorrectly named as "Wormington & Bollinger Law Firm") ("Defendants") pending request for Plaintiff to post security in connection with the relief requested pursuant to their Motion to Declare Plaintiff Darlene C. Amrhein a Vexatious Litigant and Requesting Security.

3. I am an attorney duly licensed to practice law in the State of Texas since 1998. I have 19 years of experience in the practice of litigation. I practice law as a member of Cobb Martinez Woodward PLLC, 1700 Pacific Ave., Suite 3100, Dallas, Texas 75201.

4. Defendants Lennie F. Bollinger and Wormington Law Group, PLLC d/b/a Wormington and Bollinger retained Cobb Martinez Woodward PLLC to represent them in this lawsuit. I am lead counsel of record for Defendants in the case. I have participated in and have personal knowledge of this case and the work performed in the representation of Defendants. I also have personal knowledge of the work that will be required to defend this case in the event it proceeds to trial.

5. From November 2, 2017, to February 9, 2018, Defendants incurred $34,827.57 in

attorneys' fees and expenses in defending this lawsuit (see Exhibit J-1 – billing statements). In addition, it is anticipated that another 20 hours of attorney time will be necessary to prepare for the hearing on the Motion, including drafting and filing a reply to Plaintiff's Response, for a total of approximately $5,200.00. **Thus, the total amount of fees incurred in defense of this case through a hearing on the vexatious litigant motion, plus expenses will be approximately $40,027.57.** This total amount does not include secretarial time, overhead expenses, printing, scanning, LexisNexis or other legal research database expenses.

6. I am familiar with legal services Cobb Martinez Woodward PLLC has rendered for Defendants in this case, and certify that the legal services rendered were reasonable and necessary legal services in the defense of the case. The issues involved in this case required Cobb Martinez Woodward PLLC to defend this case by, among other things: (1) investigating the claims, (2) researching and analyzing legal issues, (3) drafting pleadings, (4) consulting with Defendants, (5) engaging in dispositive motion practice, including researching and preparing a motion to declare plaintiff a vexatious litigant and requesting security under Chapter 11 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, and a Motion to Dismiss under Rule 91a of the Texas Rules of Civil Procedure, (6) studying the pleadings, motion papers, and briefing filed by the plaintiff, (7) conducting legal research regarding Chapter 11 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE and related case law, (8) preparing for and conducting the hearing on the Motion to Declare Plaintiff a Vexatious Litigant, and (9) taking other necessary actions to perform legal services properly. More detailed descriptions of that work are reflected in Exhibit A, our firm's billing statements.

7. The Cobb Martinez Woodward PLLC attorneys that have rendered services on this matter include myself, and Jennifer Smiley (Associate, licensed since 2015). Our attorneys' work is billed and paid for by Defendants at the following hourly rates: Phaneuf - $260.00, Smiley - $195.00. I am familiar with the rates charged by litigation counsel in the Dallas, Texas market. In my opinion, the hourly rates charged by Cobb Martinez Woodward for the work of these attorneys is well within the typical range in the market and that those rates are reasonable.

8. Cobb Martinez Woodward PLLC's invoices, which have been redacted only as necessary to preserve attorney-client privileged matters, and which set forth the work performed in detail, are attached hereto as Exhibit J-1 and incorporated herein by reference. Those billing statements reflect a contemporaneous record of who performed the services, at what hourly rate, when the services were performed, and how much time the work required. These billing statements have been presented to Defendants for payment. The billing statements are kept by Cobb Martinez Woodward PLLC in the regular course of business, and I am a custodian of those records. The information contained in the records was prepared in the regular course of business by employees of Cobb Martinez Woodward PLLC, who have personal knowledge of the information recorded therein. The records were made at or near the time or reasonably soon after the time that the services were provided. The records are exact duplicates of the originals, with the exception of minor redactions to protect attorney-client privilege.

9. If this case progresses to trial, based on the voluminous pleadings already filed by

Plaintiff in this case, in addition to examples of filings by Plaintiff in other cases she has litigated, Defendants anticipate they will be required to make an additional substantial investment of attorney time and resources. Discovery will include at least four fact witness depositions; and, based upon the allegations, experts will be needed in the area of legal malpractice. At this point, a trial of 3-4 days would be a conservative estimate. From my experience, attorney fees and expenses will exceed $100,000.00 beyond the amount already expended.

10. In my opinion, the fees and costs incurred by Defendants for defense of this matter, and that will be incurred, through the date of the hearing in the amount of $40,027.57 are reasonable and necessary. In reaching my opinions on attorneys' fees in this case, I took into account the following factors as prescribed by Rule 1.04 of the Texas Rules of Professional Conduct:

a. the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;

b. the likelihood that the acceptance of the particular employment will preclude other employment;

c. the fee customarily charged in the locality for similar legal services;

d. the amount involved and the results obtained;

e. the time limitations imposed by the client or by the circumstances;

f. the nature and length of the professional relationship with the client;

g. the experience, reputation, and ability of the lawyer or lawyers performing the services; and

h. whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

See Arthur Anderson & Co. v. Perry Equipment Corp., 945 S.W.2d 812, 818 (Tex. 1997).

11. In addition, should there be any proceeding in any court, state or federal, directly or indirectly appealing or attacking the judgment rendered in this cause, Cobb Martinez Woodward PLLC may reasonably be expected to perform further legal services on behalf of Defendants, including but not limited to research of law applicable to the legal bases for such proceedings, preparation of pleadings, briefs, and court exhibits for use in such proceedings, and preparation for and appearances at such proceedings. Additional conditional reasonable attorneys' fees for proceedings appealing or attacking the judgment would be as follows:

(A) In the event of an appeal to the Court of Appeals is made, the sum of $29,900. This would include anticipated review and analysis of the record on appeal, legal research, review and analysis of an appellant's brief, preparation of an appellee's brief, review and analysis of an appellant's reply brief, communication with other

counsel, preparation and review of motions, docketing statement, record requests and the like, preparation and presentation of oral argument, and preparation of motions or responses to motions for rehearing. This estimate is based on a projection of 115 hours of attorney time at $260 per hour.

(B) In the event a Petition for Review is filed to the Texas Supreme Court, or a response to a Petition for Review, the sum of $9,750. This estimate is based on a projection of 37.5 hours of attorney time at $260 per hour.

(C) In the further event of full merits briefing being requested by the Texas Supreme Court, the further sum of $13,000. This estimate is based on a projection of 50 hours of attorney time at $260 per hour.

(C) In the event a Petition for Review is granted by the Supreme Court of Texas, the further sum of $11,700. This estimate is based on a projection of 45 hours of attorney time allocated among Phaneuf and an appellate partner such that their blended rate is $260 per hour.

12. Based on the $40,027.57 incurred for defense of this matter anticipated through the date of the hearing, in addition to the $100,000 in fees and expenses that Defendants anticipate will be incurred through a trial of this matter, Defendants request the Court enter an order requiring Plaintiff to furnish security for the benefit of Defendants in the amount of **$140,000.00** in accordance with Texas Civil Practice & Remedies Code §11.0055.

13. The amount of $140,000.00 constitutes Defendants' reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by Plaintiff, including costs and attorneys' fees.

This concludes my testimony."

Carrie Johnson Phaneuf

SUBSCRIBED AND SWORN TO BEFORE ME on this the 12th day of February 2018, to certify which witness my hand and seal of office.

KIMBERLY LANE HARRISON
Notary Public, State of Texas
Comm. Expires 12-01-2021
Notary ID 126719425

Notary Public in and for
the State of Texas

EXHIBIT J-1

Cobb Martinez Woodward PLLC

Inquiry Activity Worked/Billed Report (Inception-to-Date)

Client/Matter: 0032 Allied World Assurance Company / 00043 Amrhein, Darlene v. Wormington Law Group, Lennie F. Bollinger

Billing Attorney: CJP Carrie J. Phaneuf

	Hours	Fees	Cash Exp.	Non-Cash Exp.	Total
Unbilled:	95.40	21,281.00	45.61	0.00	**21,326.61**
Billed (Worked):	62.60	13,487.50	13.46	0.00	**13,500.96**
Worked Totals:	**158.00**	**34,768.50**	**59.07**	**0.00**	**34,827.57**
Mark Up/Down:	(1.50)	(292.50)	0.00	0.00	**(292.50)**
Discount:		0.00	0.00	0.00	**0.00**
Billed:	**61.10**	**13,195.00**	**13.46**	**0.00**	**13,208.46**
Billable:	158.00	34,768.50	59.07	0.00	**34,827.57**
Non-Billable:	0.00	0.00	0.00	0.00	**0.00**
Admin:	0.00	0.00	0.00	0.00	**0.00**
Total:	**158.00**	**34,768.50**	**59.07**	**0.00**	**34,827.57**

Employee Recap:	Hours	Fees	Cash Exp.	Non-Cash Exp.	Total
CJP Carrie J. Phaneuf	60.90	15,834.00	59.07	0.00	**15,893.07**
JLS Jennifer L. Smiley	97.10	18,934.50	0.00	0.00	**18,934.50**

ID	Date	Tkpr/Exp	Activity Description	Worked Values Qty	Worked Values Rate	Worked Values Amount	Billed Values Qty	Billed Values Rate	Billed Values Amount
Time Fees									
411686	11/02/2017	CJP Carrie J. Phaneuf	Begin review and analysis of client memo regarding facts of underlying case and strategy for responding to lawsuit	0.20	260.00	52.00	0.20	260.00	52.00
411687	11/02/2017	CJP Carrie J. Phaneuf	Phone conference with Lennie Bollinger regarding [redacted]	0.20	260.00	52.00	0.20	260.00	52.00
411688	11/02/2017	CJP Carrie J. Phaneuf	Begin review of petition and assess deadline to draft and file answer	0.10	260.00	26.00	0.10	260.00	26.00
411689	11/02/2017	CJP Carrie J. Phaneuf	Draft email with Michelle Morrell r[redacted]	0.10	260.00	26.00	0.10	260.00	26.00
411887	11/03/2017	CJP Carrie J. Phaneuf	Review email from client regarding pleading filed by plaintiff with various admissions in underlying case	0.10	260.00	26.00	0.10	260.00	26.00
412969	11/06/2017	CJP Carrie J. Phaneuf	Review and analyze plaintiff's petition, factual allegations, and causes of action in preparation for drafting answer as well as to determine w[redacted]	0.40	260.00	104.00	0.40	260.00	104.00
412970	11/06/2017	CJP Carrie J. Phaneuf	Continue review and analyze client memo regarding facts of case and strategy moving forward regarding [redacted]	0.30	260.00	78.00	0.30	260.00	78.00
412973	11/06/2017	CJP Carrie J. Phaneuf	Review and analyze federal court pleadings and orders in another case where plaintiff sued prose and court imposed injunction due to vexatious filing for support of possible vexatious litigant motion	0.30	260.00	78.00	0.30	260.00	78.00
412974	11/06/2017	CJP Carrie J. Phaneuf	Review and analyze 10 different filings in Collin County district court and small claims court where plaintiff sued prose for support of [redacted]	0.20	260.00	52.00	0.20	260.00	52.00
412977	11/06/2017	CJP Carrie J. Phaneuf	Assess grounds for possible r[redacted]	0.20	260.00	52.00	0.20	260.00	52.00
413258	11/08/2017	CJP Carrie J. Phaneuf	Review email from client regarding Amrhein's deposition in another case w[redacted]	0.10	260.00	26.00	0.10	260.00	26.00
413259	11/08/2017	CJP Carrie J. Phaneuf	Phone conference with client regarding plan for responding to suit with [redacted] as well as possible [redacted], and regarding Amrhein's prior deposition testimony	0.50	260.00	130.00	0.50	260.00	130.00
413583	11/08/2017	JLS Jennifer L. Smiley	Reviewed 13 page petition in preparation for drafting answer	0.50	195.00	97.50	0.50	195.00	97.50
413584	11/08/2017	JLS Jennifer L. Smiley	Reviewed client documents, including pleadings in underlying case, email correspondence between client and underlying plaintiff, plaintiff's 42 page memorandum to client, client's motion to withdraw as counsel in underlying representation, client's memorandum to counsel	1.80	195.00	351.00	1.80	195.00	351.00
413594	11/09/2017	JLS Jennifer L. Smiley	Drafted special exceptions related to plaintiff's petition in preparation of drafting answer	0.50	195.00	97.50	0.50	195.00	97.50
413595	11/09/2017	JLS Jennifer L. Smiley	Drafted answer including general denial, affirmative defenses, and special exceptions related to fraud and malpractice claims	2.00	195.00	390.00	2.00	195.00	390.00
413596	11/10/2017	JLS Jennifer L. Smiley	Reviewed plaintiff's 13 page petition for drafting answer	0.50	195.00	97.50	0.50	195.00	97.50

ID	Date	Tkpr/Exp	Activity Description	Worked Values Qty	Worked Values Rate	Worked Values Amount	Billed Values Qty	Billed Values Rate	Billed Values Amount
413597	11/10/2017	JLS Jennifer L. Smiley	Review rules and secondary sources regarding drafting special exceptions related to form deficiencies	0.50	195.00	97.50	0.50	195.00	97.50
413598	11/10/2017	JLS Jennifer L. Smiley	Drafted special exceptions related to petition's claims of fraud, breach of fiduciary duty, breach of contract, conspiracy, negligent misrepresentation, violations of rules of ethics and rules of civil procedure, and claim for exemplary damages	4.00	195.00	780.00	2.50	195.00	487.50
413599	11/10/2017	JLS Jennifer L. Smiley	Reviewed elements of causes of action of civil conspiracy, negligent misrepresentation for special exceptions	0.30	195.00	58.50	0.30	195.00	58.50
413600	11/10/2017	JLS Jennifer L. Smiley	Revised 21 page answer, affirmative defenses and special exceptions	1.00	195.00	195.00	1.00	195.00	195.00
413751	11/13/2017	CJP Carrie J. Phaneuf	Phone conference and emails with client regarding answer and special exceptions a[redacted]	0.50	260.00	130.00	0.50	260.00	130.00
413752	11/13/2017	CJP Carrie J. Phaneuf	Phone conference and email w[redacted]	0.60	260.00	156.00	0.60	260.00	156.00
413753	11/13/2017	CJP Carrie J. Phaneuf	Revise answer [21 pages] to petition including special exceptions to plaintiff's allegations citing to over 16 different cases, and asserting affirmative defenses	0.90	260.00	234.00	0.90	260.00	234.00
413754	11/13/2017	CJP Carrie J. Phaneuf	Continue review of plaintiff prose's voluminous other court filings and orders issued against her [6] i[redacted]	0.80	260.00	208.00	0.80	260.00	208.00
413801	11/13/2017	JLS Jennifer L. Smiley	Reviewed issue o[redacted]	0.50	195.00	97.50	0.50	195.00	97.50
413899	11/14/2017	CJP Carrie J. Phaneuf	Receipt and review of documents and pleadings from underlying lawsuit f[redacted]n preparation for drafting discovery to Amrhein; r[redacted]	0.40	260.00	104.00	0.40	260.00	104.00
413900	11/14/2017	CJP Carrie J. Phaneuf	Phone call to client to discuss draft answer	0.10	260.00	26.00	0.10	260.00	26.00
414204	11/15/2017	CJP Carrie J. Phaneuf	Revise answer to include special exceptions regarding allegations of civil rights and dicrimination violations	0.30	260.00	78.00	0.30	260.00	78.00
414205	11/15/2017	CJP Carrie J. Phaneuf	Phone conference with client regarding revised answer a[redacted] draft email regarding same	0.20	260.00	52.00	0.20	260.00	52.00
414920	11/25/2017	CJP Carrie J. Phaneuf	Review and analyze documents obtained from underlying defendant David Schroeder regarding federal court injunctions against Amrhein to filing suit in both the Eastern District and Northern District of Texas and analyze additional documents referenced therein for possible vexatious litigant motion against Amrhein	0.90	260.00	234.00	0.90	260.00	234.00
414921	11/25/2017	CJP Carrie J. Phaneuf	Review and analyze documents from client, including communications with plaintiff [10 emails, 5 pleadings/orders, and 42 page memo from Amrhein] from underlying case and assess defenses including rule 91a motion, vexatious litigant motion and discovery to plaintiff	1.00	260.00	260.00	1.00	260.00	260.00
414922	11/25/2017	CJP Carrie J. Phaneuf	Draft lengthy email to client regarding additional documents needed from underlying case to prepare defenses, rule 91a motion, vexatious litigant motion, as well as discovery to plaintiffs	0.30	260.00	78.00	0.30	260.00	78.00
415091	11/26/2017	JLS Jennifer L. Smiley	Responded to email regarding plaintiff's hearing	0.10	195.00	19.50	0.10	195.00	19.50

ID	Date	Tkpr/Exp	Activity Description	Worked Values Qty	Worked Values Rate	Worked Values Amount	Billed Values Qty	Billed Values Rate	Billed Values Amount
415122	11/27/2017	CJP Carrie J. Phaneuf	Review and analyze plaintiff's motion to recuse judge because underlying case also pending in same court and assess response to same considering statutory grounds for recusal and possible motion for sanctions	0.40	260.00	104.00	0.40	260.00	104.00
415123	11/27/2017	CJP Carrie J. Phaneuf	Review and analyze plaintiff's motion for leave to amend petition	0.20	260.00	52.00	0.20	260.00	52.00
415124	11/27/2017	CJP Carrie J. Phaneuf	Review and analyze plaintiffs 64 page amended petition attempting to clarify allegations and assert new claims and assess special exceptions to new pleading as well as whether case can be removed based on new constitutional allegations	1.00	260.00	260.00	1.00	260.00	260.00
415125	11/27/2017	CJP Carrie J. Phaneuf	Draft correspondence to Prose plaintiff regarding fact that she improperly served Bollinger with pleadings even though she has notice that our firm is representing Bollinger	0.10	260.00	26.00	0.10	260.00	26.00
415126	11/27/2017	CJP Carrie J. Phaneuf	Draft email and phone conference with client regarding new pleadings from prose plaintiff and response to same	0.30	260.00	78.00	0.30	260.00	78.00
415127	11/27/2017	CJP Carrie J. Phaneuf	Review and assess court setting hearing on pre-trial confernece	0.10	260.00	26.00	0.10	260.00	26.00
415099	11/27/2017	JLS Jennifer L. Smiley	Briefly reviewed new amended petition	0.10	195.00	19.50	0.10	195.00	19.50
415238	11/27/2017	JLS Jennifer L. Smiley	Reviewed 22 pages of amended petition to assess for additional special exceptions	0.50	195.00	97.50	0.50	195.00	97.50
415370	11/28/2017	CJP Carrie J. Phaneuf	Draft communications with prose plaintiff regarding service of answer	0.20	260.00	52.00	0.20	260.00	52.00
415371	11/28/2017	CJP Carrie J. Phaneuf	Assess grounds for vexatious litigant motion and argument as to why plaintiff has no reasonable probability of prevailing on her claims	0.40	260.00	104.00	0.40	260.00	104.00
415382	11/28/2017	CJP Carrie J. Phaneuf	Draft correspondence with client regarding plan to confer with David Schroeder's counsel on possible joint defense	0.10	260.00	26.00	0.10	260.00	26.00
415551	11/29/2017	CJP Carrie J. Phaneuf	Review notes by court regarding setting of pre trial conference	0.10	260.00	26.00	0.10	260.00	26.00
416817	12/04/2017	CJP Carrie J. Phaneuf	Receipt and review of correspondence from court regarding hearing on pre trial conference and proposed order governing pre trial deadlines	0.20	260.00	52.00	0.20	260.00	52.00
416818	12/04/2017	CJP Carrie J. Phaneuf	Receipt and review of order regarding recusal of judge and transfer to different court; forward to client with comment	0.20	260.00	52.00	0.20	260.00	52.00
416819	12/04/2017	CJP Carrie J. Phaneuf	Phone call to client regarding case status	0.10	260.00	26.00	0.10	260.00	26.00
417489	12/06/2017	CJP Carrie J. Phaneuf	Draft emails with client regarding draft responses to Request for Admissions	0.20	260.00	52.00	0.20	260.00	52.00
417490	12/06/2017	CJP Carrie J. Phaneuf	Revise responses to Request for Admissions	0.20	260.00	52.00	0.20	260.00	52.00
418258	12/06/2017	JLS Jennifer L. Smiley	Prepared Defendants' responses to plaintiff's request for disclosures	1.00	195.00	195.00	1.00	195.00	195.00
418259	12/06/2017	JLS Jennifer L. Smiley	Prepared Defendant's responses for request for admission	1.20	195.00	234.00	1.20	195.00	234.00

ID	Date	Tkpr/Exp	Activity Description	Worked Values Qty	Worked Values Rate	Worked Values Amount	Billed Values Qty	Billed Values Rate	Billed Values Amount
417495	12/07/2017	CJP Carrie J. Phaneuf	Draft email to client asking for information needed to respond to Request for Disclosure and receive response	0.10	260.00	26.00	0.10	260.00	26.00
417496	12/07/2017	CJP Carrie J. Phaneuf	Draft email to Michelle Morrell regarding i[redacted]	0.10	260.00	26.00	0.10	260.00	26.00
417500	12/07/2017	CJP Carrie J. Phaneuf	Revise responses to Request for Disclosure	0.20	260.00	52.00	0.20	260.00	52.00
417501	12/07/2017	CJP Carrie J. Phaneuf	Review client revisions to Request for Admissions and draft revisions in accordance with same	0.30	260.00	78.00	0.30	260.00	78.00
417502	12/07/2017	CJP Carrie J. Phaneuf	Draft email with client regarding final approval for responses to Request for Admissions	0.10	260.00	26.00	0.10	260.00	26.00
418268	12/07/2017	JLS Jennifer L. Smiley	Further revised Defendants' responses to Request for Admissions and Request for Disclosure	0.20	195.00	39.00	0.20	195.00	39.00
417811	12/11/2017	CJP Carrie J. Phaneuf	Draft final revisions to responses to Request for Admissions and Request for Disclosure and forward to plaintiff with correspondence	0.30	260.00	78.00	0.30	260.00	78.00
417824	12/12/2017	CJP Carrie J. Phaneuf	Review phone recordings [redacted]	0.10	260.00	26.00	0.10	260.00	26.00
417828	12/12/2017	CJP Carrie J. Phaneuf	Draft email to client regarding responses to Request for Admissions and Request for Disclosure	0.10	260.00	26.00	0.10	260.00	26.00
418289	12/12/2017	JLS Jennifer L. Smiley	Begin drafting vexatious litigant motion, including facts section and section on plaintiff's past litigations	2.00	195.00	390.00	2.00	195.00	390.00
418290	12/12/2017	JLS Jennifer L. Smiley	Reviewed and analyzed plaintiff's past cases for use in vexatious litigant motion	2.20	195.00	429.00	2.20	195.00	429.00
417946	12/13/2017	CJP Carrie J. Phaneuf	Phone conference with Jerry Jarzombek, [redacted], regarding plan to respond to Amrhein lawsuits and possible vexatious litigant motion	0.10	260.00	26.00	0.10	260.00	26.00
418070	12/14/2017	CJP Carrie J. Phaneuf	Draft emails with client regarding hearing in Amrhein v. Schroeder case and dismissal of same	0.10	260.00	26.00	0.10	260.00	26.00
418299	12/14/2017	JLS Jennifer L. Smiley	Attended hearing in Collin County regarding pre-trial conference and plea to jurisdiction in Amrhein's underlying case and Justice Court appeal (underlying case in this matter) at client request	3.00	195.00	585.00	3.00	195.00	585.00
418300	12/14/2017	JLS Jennifer L. Smiley	Communicated with client regarding i[redacted]	0.10	195.00	19.50	0.10	195.00	19.50
418496	12/19/2017	CJP Carrie J. Phaneuf	Draft email with client regarding conference to discuss possible rule 91a motion to dismiss	0.10	260.00	26.00	0.10	260.00	26.00
418703	12/20/2017	CJP Carrie J. Phaneuf	Phone conference with client to discuss plan for Rule 91a motion to dismiss and vexatious litigant motion	0.20	260.00	52.00	0.20	260.00	52.00
418704	12/20/2017	CJP Carrie J. Phaneuf	Review legal authority regarding r[redacted]	0.80	260.00	208.00	0.80	260.00	208.00
418705	12/20/2017	CJP Carrie J. Phaneuf	Review and make critical assessment of possible grounds for Rule 91a motion to dismiss based on plaintiff petition	0.90	260.00	234.00	0.90	260.00	234.00

ID	Date	Tkpr/Exp	Activity Description	Worked Values Qty	Worked Values Rate	Worked Values Amount	Billed Values Qty	Billed Values Rate	Billed Values Amount
419267	12/20/2017	JLS Jennifer L. Smiley		2.80	195.00	546.00	2.80	195.00	546.00
	Reviewed and analyzed 30 cases on whether a non-attorney plaintiff can bring claims in her representative capacity of a deceased person or his estate in preparation of drafting rule 91a motion to dismiss on plaintiff's claims								
419268	12/20/2017	JLS Jennifer L. Smiley		2.00	195.00	390.00	2.00	195.00	390.00
	Prepared argument section on whether a non-attorney plaintiff can bring claims in a representative capacity of a party or his estate								
420079	12/20/2017	JLS Jennifer L. Smiley		1.00	195.00	195.00	1.00	195.00	195.00
	Prepared factual and procedural history section of Rule 91a motion to dismiss								
420080	12/20/2017	JLS Jennifer L. Smiley		4.30	195.00	838.50	4.30	195.00	838.50
	Prepared argument section addressing each of plaintiff's claims and incorporating case law into analysis for Rule 91a motion to dismiss (19 pages)								
420083	12/21/2017	JLS Jennifer L. Smiley		1.90	195.00	370.50	1.90	195.00	370.50
	Revised Rule 91a motion to dismiss argument section (19 pages)								
420088	12/21/2017	JLS Jennifer L. Smiley		1.00	195.00	195.00	1.00	195.00	195.00
	Prepared/Revised argument section including case law regarding plaintiff's fraud claim in Rule 91a motion to dismiss (19 pages)								
420090	12/21/2017	JLS Jennifer L. Smiley		2.00	195.00	390.00	2.00	195.00	390.00
	Prepared/Revised argument section including case law regarding plaintiff's breach of contract claim and impermissible fracturing of a legal malpractice claim in Rule 91a motion to dismiss (19 pages)								
420091	12/21/2017	JLS Jennifer L. Smiley		2.00	195.00	390.00	2.00	195.00	390.00
	Prepared/Revised argument section including case law regarding plaintiff's discrimination and civil rights violations claims in Rule 91a motion to dismiss (19 pages)								
418873	12/22/2017	CJP Carrie J. Phaneuf		1.50	260.00	390.00	1.50	260.00	390.00
	Finalize Rule 91a motion to dismiss arguing for dismissal of all plaintiff's causes of action except legal malpractice on the Schroeder matter because claims have no basis in law or in fact								
418874	12/22/2017	CJP Carrie J. Phaneuf		0.20	260.00	52.00	0.20	260.00	52.00
	Draft emails with client regarding rule 91a motion for his review and regarding deadlines to set hearing and for court ruling according to statute								
418875	12/22/2017	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.10	260.00	26.00
	Draft letter to prose plaintiff regarding rule 91a motion to dismiss								
419242	12/27/2017	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.10	260.00	26.00
	Attend to repeated efforts to obtain hearing from court on Rule 91a motion to dismiss in accordance with statutory deadlines								
419244	12/27/2017	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.10	260.00	26.00
	Assess amendments to answer based on allegations in Rule 91a motion to dismiss as well as additional special exceptions to plaintiff amended petition								
420101	12/27/2017	JLS Jennifer L. Smiley		3.90	195.00	760.50	3.90	195.00	760.50
	Prepared 15 page amended answer to comport with defenses asserted in Rule 91a motion to dismiss and addressing the defects in plaintiff's 64 page amended petition								
419344	12/28/2017	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.10	260.00	26.00
	Draft email to client regarding s[redacted]								
419481	12/29/2017	CJP Carrie J. Phaneuf		0.40	260.00	104.00	0.40	260.00	104.00
	Analysis of issues of standing and capacity of Prose to assert claims in representative capacity to determine affirmative defenses for amended answer								
419482	12/29/2017	CJP Carrie J. Phaneuf		0.20	260.00	52.00	0.20	260.00	52.00
	Draft emails with client regarding status of hearing on rule 91a motion to dismiss and plaintiff request for continuance due to alleged medical issues despite voluminous filing in separate case								

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419483	12/29/2017	CJP Carrie J. Phaneuf	Receipt and review of plaintiff prose email claiming need for continuance due to medical issues	0.10	260.00	26.00	0.10	260.00	26.00
419484	12/29/2017	CJP Carrie J. Phaneuf	Draft revisions to amended answer asserting arguments regarding standing and other defensive issues raised in rule 91a motion to dismiss	0.90	260.00	234.00	0.90	260.00	234.00
419784	01/02/2018	CJP Carrie J. Phaneuf	Continue drafting revisions to amended answer, special exceptions and affirmative defenses to comport with rule 91 a motion to dismiss	0.20	260.00	52.00	0.00	0.00	0.00
419785	01/02/2018	CJP Carrie J. Phaneuf	Receipt and review of Amrhein's motion to continue response deadline to rule 91 a despite fact that no deadline exists	0.10	260.00	26.00	0.00	0.00	0.00
419786	01/02/2018	CJP Carrie J. Phaneuf	Draft email to client regarding revised answer, Amrhein's motion for continuance and status of hearing on rule 91a	0.10	260.00	26.00	0.00	0.00	0.00
419787	01/02/2018	CJP Carrie J. Phaneuf	Receipt and review of appeal Amrhein filed in lawsuit against USA for support of vexatious litigant motion	0.10	260.00	26.00	0.00	0.00	0.00
420127	01/03/2018	CJP Carrie J. Phaneuf	Finalize amended answer for filing with court	0.10	260.00	26.00	0.00	0.00	0.00
420128	01/03/2018	CJP Carrie J. Phaneuf	Draft pleading required by court regarding earing on motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
420129	01/03/2018	CJP Carrie J. Phaneuf	Assess filing by plaintiff of 200 page response to motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
420130	01/03/2018	CJP Carrie J. Phaneuf	Review correspondence from court regarding pre trial conference and available trial dates for scheduling order required to be filed in advance of hearing	0.20	260.00	52.00	0.00	0.00	0.00
420131	01/03/2018	CJP Carrie J. Phaneuf	Draft email to client regarding available trial dates communicated by court for pre trial conference	0.10	260.00	26.00	0.00	0.00	0.00
420435	01/04/2018	CJP Carrie J. Phaneuf	Review court's communication regarding available trial dates and attend to discovery and expert deadlines in preparation for communicating with prose plaintiff regarding same as ordered by court	0.30	260.00	78.00	0.00	0.00	0.00
420436	01/04/2018	CJP Carrie J. Phaneuf	Draft multiple communications with client regarding assessment of trial date and pre trial deadlines in preparation for court ordered conference as well as regarding plaintiff prose claim she has conflict with hearing on motion to dismiss	0.40	260.00	104.00	0.00	0.00	0.00
420437	01/04/2018	CJP Carrie J. Phaneuf	Draft correspondence with plaintiff prose regarding her alleged conflicts with hearing on motion to dismiss	0.20	260.00	52.00	0.00	0.00	0.00
420666	01/05/2018	CJP Carrie J. Phaneuf	Assess request from plaintiff to move hearing on rule 91a and options from court regarding same in light of statute that dicates court must rule on motion within a certain period of time	0.20	260.00	52.00	0.00	0.00	0.00
420667	01/05/2018	CJP Carrie J. Phaneuf	Emails and phone conference with client regarding hearing on rule 91a motion to dismiss and plaintiff's response to motion	0.30	260.00	78.00	0.00	0.00	0.00
420668	01/05/2018	CJP Carrie J. Phaneuf	Draft email to plaintiff Prose with proposed order on pre trial deadlines as required by court in advance of pretrial conference and make inquiry regarding mediators as required by court	0.10	260.00	26.00	0.00	0.00	0.00
421230	01/09/2018	CJP Carrie J. Phaneuf	Draft correspondence to prose plaintiff regarding continued efforts to conference with her in advance of pre trial conference as required by court	0.20	260.00	52.00	0.00	0.00	0.00

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421697	01/12/2018	CJP Carrie J. Phaneuf	Draft email to prose plaintiff with continued effort to conference with her regarding proposed pre trial requirements as ordered by court in advance of pre trial conference	0.10	260.00	26.00	0.00	0.00	0.00
421698	01/12/2018	CJP Carrie J. Phaneuf	Receipt and review of court communication regarding pre trial conference and prepare for same by reviewing proposed trial dates and efforts to communicate with prose plaintiff regarding same	0.20	260.00	52.00	0.00	0.00	0.00
421699	01/12/2018	CJP Carrie J. Phaneuf	Draft email with client regarding production of underlying file materials	0.10	260.00	26.00	0.00	0.00	0.00
422317	01/12/2018	JLS Jennifer L. Smiley	Reviewed and analyzed 107 pages of client emails between Bollinger and Amrhein concerning underlying case strategy in preparation of preparing chronology of case and status report	1.00	195.00	195.00	0.00	0.00	0.00
422318	01/12/2018	JLS Jennifer L. Smiley	Prepared chronology of underlying case based on attorney's emails to Amrhein and underlying case docket sheet	1.40	195.00	273.00	0.00	0.00	0.00
421928	01/15/2018	CJP Carrie J. Phaneuf	Phone call and email to prose plaintiff regarding continued efforts to conference with her as required by court in advance of hearing on pre trial conference	0.20	260.00	52.00	0.00	0.00	0.00
422321	01/15/2018	JLS Jennifer L. Smiley	Continued preparing vexatious litigant motion including drafting section concerning Amrhein's other pro se cases as required by statute	1.10	195.00	214.50	0.00	0.00	0.00
422325	01/15/2018	JLS Jennifer L. Smiley	Reviewed and analyzed 150 pages of client's file, including photos of Amrhein's underlying case damages, pleadings and orders in the underlying case, letters and notes Amrhein sent to Bollinger, and updated the chronology regarding these documents	2.10	195.00	409.50	0.00	0.00	0.00
422327	01/15/2018	JLS Jennifer L. Smiley	Prepared vexatious litigant motion argument section regarding defenses to plaintiff's causes of action	1.00	195.00	195.00	0.00	0.00	0.00
422036	01/16/2018	CJP Carrie J. Phaneuf	Receipt and review of prose plaintiff motion to stay and continue case and hearing on rule 91a motion to dismiss and plan response to same considering allegations of plaintiff regarding medical issues and rules that require ruling by court in 45 days from filing of motion	0.70	260.00	182.00	0.00	0.00	0.00
422037	01/16/2018	CJP Carrie J. Phaneuf	Draft communications with client regarding response to plaintiff request to stay and continue hearing on rule 91a motion to dismiss	0.20	260.00	52.00	0.00	0.00	0.00
422038	01/16/2018	CJP Carrie J. Phaneuf	Phone conference with court regarding plaintiff request to continue hearing and request that matter be heard by court by submission to comply with rule deadlines	0.10	260.00	26.00	0.00	0.00	0.00
422039	01/16/2018	CJP Carrie J. Phaneuf	Draft response in opposition to plaintiff request to continue hearing on rule 91a motion to dismiss and request court hear matter by submission to comply with rule deadlines regarding same	0.30	260.00	78.00	0.00	0.00	0.00
422040	01/16/2018	CJP Carrie J. Phaneuf	Begin review and analysis of 225 page response from prose plaintiff to rule 91a motion to dismiss and plan reply to same	1.00	260.00	260.00	0.00	0.00	0.00
422329	01/16/2018	JLS Jennifer L. Smiley	Continued preparing vexatious litigant motion argument section on defenses to her legal malpractice cause of action and other causes of action including inserting relevant case law to support defense	3.00	195.00	585.00	0.00	0.00	0.00
422330	01/16/2018	JLS Jennifer L. Smiley	Reviewed and analyzed Amrhein's 13 page notice to the court to continue the motion to dismiss hearing and prepared response in opposition and propsed order	0.60	195.00	117.00	0.00	0.00	0.00
422332	01/16/2018	JLS Jennifer L. Smiley	Reviewed and analyzed 20 legal malpractice cases for argument section of vexatious litigant motion regarding claims asserted when a lawyer withdraws from representation during litigation	1.20	195.00	234.00	0.00	0.00	0.00

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422259	01/17/2018	CJP Carrie J. Phaneuf	Assess status of court ruling on plaintiff request to continue hearing on motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
422260	01/17/2018	CJP Carrie J. Phaneuf	Receipt and review of court's order denying plaintiff request to continue hearing and granting defendant relief on hearing by submission	0.10	260.00	26.00	0.00	0.00	0.00
422261	01/17/2018	CJP Carrie J. Phaneuf	Draft email to Prose plaintiff regarding court order on plaintiff request to continue and stay proceedings	0.10	260.00	26.00	0.00	0.00	0.00
422262	01/17/2018	CJP Carrie J. Phaneuf	Draft email to client regarding court order on plaintiff request to continue and stay proceedings	0.10	260.00	26.00	0.00	0.00	0.00
422263	01/17/2018	CJP Carrie J. Phaneuf	Plan for reply to response to motion to dismiss and draft outline for same due to court hearing motion by submission	0.90	260.00	234.00	0.00	0.00	0.00
422264	01/17/2018	CJP Carrie J. Phaneuf	Draft affidavit in support of request for attorneys' fees and review billing in support of same	1.50	260.00	390.00	0.00	0.00	0.00
422334	01/17/2018	JLS Jennifer L. Smiley	Reviewed and analyzed Amrhein's 225 page response to motion to dismiss in preparation for drafting Reply to Amrhein's response	0.70	195.00	136.50	0.00	0.00	0.00
422335	01/17/2018	JLS Jennifer L. Smiley	Prepared Reply to Plaintiff's response to motion to dismiss, including background section, argument on Plaintiff's claims in a representative capacity, and argument regarding plaintiff's use of extrinsic evidence in her Response	3.40	195.00	663.00	0.00	0.00	0.00
422337	01/17/2018	JLS Jennifer L. Smiley	Prepared Reply to Amrhein's Response to motion to dismiss under Rule 91 including asserting defenses to each of her 12 causes of action and argument how Plaintiff failed to response with authority to contradict each defense asserted in motion to dismiss (8 pages)	3.10	195.00	604.50	0.00	0.00	0.00
422630	01/18/2018	CJP Carrie J. Phaneuf	Draft revisions to reply to response to rule 91a motion to dismiss	0.90	260.00	234.00	0.00	0.00	0.00
422631	01/18/2018	CJP Carrie J. Phaneuf	Draft email with client regarding reply to response to motion to dismiss for his review and in response to his inquiry and regarding affidavit on fees	0.10	260.00	26.00	0.00	0.00	0.00
422632	01/18/2018	CJP Carrie J. Phaneuf	Finalize Phaneuf affidavit to support request for an award of attorneys fees for motion to disimss with billing statements in support	0.50	260.00	130.00	0.00	0.00	0.00
422338	01/18/2018	JLS Jennifer L. Smiley	Prepared affidavit on reasonable attorneys fees incurred in defense of Plaintiff's baseless claims	0.70	195.00	136.50	0.00	0.00	0.00
422690	01/18/2018	JLS Jennifer L. Smiley	Prepared vexatious litigation motion, including summarizing plaintiff's past cases to comply with statutory requirements, and argument section (30 pages)	2.40	195.00	468.00	0.00	0.00	0.00
422893	01/19/2018	CJP Carrie J. Phaneuf	Draft final revisions to reply to response to motion to dismiss for submission to the court	0.30	260.00	78.00	0.00	0.00	0.00
422894	01/19/2018	CJP Carrie J. Phaneuf	Review communication from court regarding plaintiff filing of supplement and assess substance of fling	0.10	260.00	26.00	0.00	0.00	0.00
424887	01/19/2018	JLS Jennifer L. Smiley	Prepared legal malpractice elements section of vexatious litigant motion	0.10	195.00	19.50	0.00	0.00	0.00
424894	01/19/2018	JLS Jennifer L. Smiley	Prepared proposed order regarding rule 91a motion to dismiss for judge	0.70	195.00	136.50	0.00	0.00	0.00

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424908	01/22/2018	JLS Jennifer L. Smiley	Briefly reviewed Amrhein's second response to rule 91a motion	0.20	195.00	39.00	0.00	0.00	0.00
424909	01/22/2018	JLS Jennifer L. Smiley	Continued drafting amended answer including DTPA exemption and affirmative defenses	1.00	195.00	195.00	0.00	0.00	0.00
423244	01/23/2018	CJP Carrie J. Phaneuf	Review and analyze plaintiff's first supplement [32 pages] to response to motion to dismiss with exhibits in preparation for drafting additional reply	0.50	260.00	130.00	0.00	0.00	0.00
423245	01/23/2018	CJP Carrie J. Phaneuf	Review and study plaintiff's voluminous second supplement with exhibits [176 pages] to defendants' motion to dismiss in preparation for drafting additional reply	1.50	260.00	390.00	0.00	0.00	0.00
423246	01/23/2018	CJP Carrie J. Phaneuf	Review and analyze plaintiff amended petition to compare allegations to first and second supplement and in preparation for additional reply to response to motion to dismiss	0.80	260.00	208.00	0.00	0.00	0.00
423247	01/23/2018	CJP Carrie J. Phaneuf	Draft additional reply to first and second supplemental response by plaintiff to motion to dismiss in advance of court hearing by submission [15 pages]	2.80	260.00	728.00	0.00	0.00	0.00
423248	01/23/2018	CJP Carrie J. Phaneuf	Draft email with client regarding plaintiff's supplemental responses, plan to reply and proposed order filed with court	0.20	260.00	52.00	0.00	0.00	0.00
423421	01/24/2018	CJP Carrie J. Phaneuf	Review and assess status of hearing by submission on motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
423425	01/24/2018	CJP Carrie J. Phaneuf	Phone conference with client regarding plaintiff allegations of cover up a[redacted]	0.20	260.00	52.00	0.00	0.00	0.00
423594	01/25/2018	CJP Carrie J. Phaneuf	Draft Request for Disclosure to plaintiff	0.20	260.00	52.00	0.00	0.00	0.00
424927	01/25/2018	JLS Jennifer L. Smiley	Drafted vexatious litigant motion, including section on Amrhein's previous lawsuits and summary of her old cases, and no reasonable probability of prevailing on legal malpractice case section (33 pages)	4.30	195.00	838.50	0.00	0.00	0.00
423781	01/26/2018	CJP Carrie J. Phaneuf	Draft correspondence to court regarding hearing by submission on motion to dismiss and advising that court must rule on same by February 5 in accordance with statute	0.20	260.00	52.00	0.00	0.00	0.00
424312	01/30/2018	CJP Carrie J. Phaneuf	Receipt and review of order granting motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
424313	01/30/2018	CJP Carrie J. Phaneuf	Draft email to client regarding order granting motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
424314	01/30/2018	CJP Carrie J. Phaneuf	Phone conference with Lennie Bollinger regarding order on motion to dismiss and regarding vexatious litigant motion	0.10	260.00	26.00	0.00	0.00	0.00
424315	01/30/2018	CJP Carrie J. Phaneuf	Draft letter to prose plaintiff regarding order on motion to dismiss	0.10	260.00	26.00	0.00	0.00	0.00
425216	01/30/2018	JLS Jennifer L. Smiley	Prepared vexatious litigant to include ruling after rule91a motion and changes to plaintiff's claims because rule 91a motion was granted, argument section on Amrhein's previous litigations; and argument section that there is no reasonable probability of prevailing because of withdrawal	1.60	195.00	312.00	0.00	0.00	0.00
424563	01/31/2018	CJP Carrie J. Phaneuf	Review email from attorney in separate Amrhein litigation r[redacted]	0.10	260.00	26.00	0.00	0.00	0.00

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425220	01/31/2018	JLS Jennifer L. Smiley		3.10	195.00	604.50	0.00	0.00	0.00
	Reviewed and analyzed deposition transcript of Amrhein in Prosperity Bank case from Oct. 2017 for use in vexatious litigant motion (316 pages)								
425221	01/31/2018	JLS Jennifer L. Smiley		5.60	195.00	1,092.00	0.00	0.00	0.00
	Continued drafting vexatious litigant motion (23 pages), such as including relevant deposition sections, argument regarding the difference between Bollinger's petition and Amrhein's amended petition, and argument regarding no reasonable probability of prevailing on legal malpractice claim (that Bollinger's actions and omissions did not cause the case to be dismissed, that Amrhein's actions and amended petition was the cause of the dismissal, and that Bollinger did not fail to communicate during his representation)								
425222	01/31/2018	JLS Jennifer L. Smiley		0.70	195.00	136.50	0.00	0.00	0.00
	Reviewed 10 vexatious litigant cases involving professional malpractice for example of when there was no reasonable probability of plaintiff prevailing on legal malpractice case								
424869	02/01/2018	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.00	0.00	0.00
	Draft email to clients regarding whether plaintiff prose has responded to order of dismissal								
425223	02/01/2018	JLS Jennifer L. Smiley		2.00	195.00	390.00	0.00	0.00	0.00
	Prepared affidavit of Lennie F. Bollinger for support of vexatious litigant motion								
425224	02/01/2018	JLS Jennifer L. Smiley		3.00	195.00	585.00	0.00	0.00	0.00
	Continued drafting vexatious litigant motion (28 pages) including addition of argument establishing her 8 previous cases filed in the last 7 years, argument regarding the withdrawal, how Defendants' actions were removed from final dismissal, and how the petition drafted by defendants was within the jurisdictional limits of justice court								
425225	02/01/2018	JLS Jennifer L. Smiley		3.00	195.00	585.00	0.00	0.00	0.00
	Continued drafting vexatious litigant motion (28 pages) argument section, such as argument on the alleged failure to conduct discovery, the jurisdictional limits of justice court, the alleged conflict of interest with David Schroeder, and how Amrhein repeatedly litigates the same causes of action against the same defendants								
425256	02/02/2018	CJP Carrie J. Phaneuf		0.20	260.00	52.00	0.00	0.00	0.00
	Phone conference with client regarding vexatious litigant motion and proof needed to support same as well as possible offer to plaintiff prose to not pursue fees if she dismisses case								
425226	02/02/2018	JLS Jennifer L. Smiley		1.00	195.00	195.00	0.00	0.00	0.00
	Revised and edited vexatious litigant motion (30 pages)								
425227	02/02/2018	JLS Jennifer L. Smiley		1.00	195.00	195.00	0.00	0.00	0.00
	Selected and reviewed 25 exhibits for inclusion into vexatious litigant motion, including selecting relevant emails from 107 pages of emails and redacting selected emails								
425228	02/02/2018	JLS Jennifer L. Smiley		1.00	195.00	195.00	0.00	0.00	0.00
	Prepared affidavit of Lennie Bollinger for support of vexatious litigant motion								
425229	02/02/2018	JLS Jennifer L. Smiley		2.00	195.00	390.00	0.00	0.00	0.00
	Reviewed and analyzed 10 of Schroeder's, Amrhein's, and Court's pleadings in underlying JP and JP appeal case, for inclusion into vexatious litigant motion as exhibits and support of argument that there is no reasonable probability that Amrhein will prevail on legal malpractice claim								
425230	02/02/2018	JLS Jennifer L. Smiley		1.20	195.00	234.00	0.00	0.00	0.00
	Added facts of underlying JP case and JP appeal to fact section of vexatious litigant motion								
425231	02/02/2018	JLS Jennifer L. Smiley		1.00	195.00	195.00	0.00	0.00	0.00
	Drafted argument regarding how Amrhein's past cases have been declared frivolous and groundless by other courts for inclusion into vexatious litigant motion								
426263	02/05/2018	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.00	0.00	0.00
	Phone call to Michelle Morrell re[redacted]								
426268	02/05/2018	CJP Carrie J. Phaneuf		1.00	260.00	260.00	0.00	0.00	0.00
	Draft revisions to vexatious litigant motion								

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426269	02/05/2018	CJP	Carrie J. Phaneuf	0.90	260.00	234.00	0.00	0.00	0.00
			Review and assess clilent documents and chronology of underlying case for support for vexatious litigant motion						
426270	02/05/2018	CJP	Carrie J. Phaneuf	0.10	260.00	26.00	0.00	0.00	0.00
			Draft email to client regarding underlying communications needed for vexatious litigant motion						
426271	02/05/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Draft revisions to Bollinger affidavit for support of vexatious litigant motion						
426600	02/06/2018	CJP	Carrie J. Phaneuf	0.10	260.00	26.00	0.00	0.00	0.00
			Phone conference with Michelle Morrell r[redacted]						
426601	02/06/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Emails with Lennie Bollinger regarding recent Amrhein filngs and regarding settlement offer to Amrhein						
426602	02/06/2018	CJP	Carrie J. Phaneuf	1.50	260.00	390.00	0.00	0.00	0.00
			Review and analyze prior Amrhein deposition testimony regarding prior litigations and regarding alleged mental anguish to support vexatious litigant motion						
426603	02/06/2018	CJP	Carrie J. Phaneuf	0.10	260.00	26.00	0.00	0.00	0.00
			Draft email to attorney from Prosperity Bank lawsuit t[redacted]						
426604	02/06/2018	CJP	Carrie J. Phaneuf	1.10	260.00	286.00	0.00	0.00	0.00
			Continue revisions to vexatious litigant motion and assess emails from underlying case to use as evidence in support of motion						
426737	02/07/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Draft emails with client a[redacted]						
426738	02/07/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Draft settlement offer to plaintiff						
426739	02/07/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Review client email with causation argument and additional documents to review for vexatious litigant motion						
426740	02/07/2018	CJP	Carrie J. Phaneuf	0.10	260.00	26.00	0.00	0.00	0.00
			Phone conference with client regarding recent plaintiff filings and need to move forward with vexatious litigant motion						
426741	02/07/2018	CJP	Carrie J. Phaneuf	3.40	260.00	884.00	0.00	0.00	0.00
			Critical review and analysis of seven different matters plaintiff filed Prose that were disposed of against her for vexatious litigant motion including opinions and orders from courts of appeal and supreme courts in federal and state courts						
426742	02/07/2018	CJP	Carrie J. Phaneuf	1.00	260.00	260.00	0.00	0.00	0.00
			Review and analysis of underlying pleadings and emails between Bollinger and Amrhein to determine evidence in support of vexatious litgant motion						
426743	02/07/2018	CJP	Carrie J. Phaneuf	2.00	260.00	520.00	0.00	0.00	0.00
			Continue drafting motion to declare plaintiff a vexatious litigant						
426849	02/08/2018	CJP	Carrie J. Phaneuf	1.00	260.00	260.00	0.00	0.00	0.00
			Review and analyze plaintiff prose 51 page response to order granting rule 91a motion and threat for further litigation against judge and defense attomeys						
426850	02/08/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Review and analyze plaintiff prose request to stay proceedings due to medical condition and contemplate response to same						
426851	02/08/2018	CJP	Carrie J. Phaneuf	0.20	260.00	52.00	0.00	0.00	0.00
			Email and phone conference with client regarding possible response to request for stay and status of vexatious litigant motion						
426852	02/08/2018	CJP	Carrie J. Phaneuf	0.90	260.00	234.00	0.00	0.00	0.00
			Review and analyze legal authority regarding judicial admissions for vexatious litigant motion						

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426853	02/08/2018	CJP Carrie J. Phaneuf		0.80	260.00	208.00	0.00	0.00	0.00
	Review and anlayze legal authority regarding superceding cause for vexatious litigant motion								
426854	02/08/2018	CJP Carrie J. Phaneuf		2.40	260.00	624.00	0.00	0.00	0.00
	Continue drafting motion to declare plaintiff a vexatious litigant [30+ pages]								
426855	02/08/2018	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.00	0.00	0.00
	Review status of plaintiff prose 5th circuit appeal for vexatious litgiant motion								
426989	02/09/2018	CJP Carrie J. Phaneuf		2.00	260.00	520.00	0.00	0.00	0.00
	Draft affidavit of Lennie Bollinger to support motion to declare Amrhein a vexatious litigant								
426990	02/09/2018	CJP Carrie J. Phaneuf		3.30	260.00	858.00	0.00	0.00	0.00
	Draft final revisions to motion to declare Amrhein a vexatious litigant and prepare voluminous evidence in support of motion for filing with court [over 350 pages total]								
426991	02/09/2018	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.00	0.00	0.00
	Draft correspondence with client regarding his affidavit to support vexatious liitigant motion and draft of motion for his review								
426992	02/09/2018	CJP Carrie J. Phaneuf		0.10	260.00	26.00	0.00	0.00	0.00
	Draft letter to Amrhein prose regarding motion to declare her a vexatious litigant								
			Totals:	**158.00**		**34,768.50**	**61.10**		**13,195.00**
Expenses									
417697	11/13/2017	E112		6.80	1.00	6.80	6.80	1.00	6.80
	Online research via Pacer for court docket report and documents.								
417219	11/15/2017	E112		3.33	1.00	3.33	3.33	1.00	3.33
	Filetime fee - Defendants Lennie F. Bollinger and Wormington & Bollinger's Original Answer (EFILETX 20741829)								
421527	12/12/2017	E112		5.60	1.00	5.60	0.00	0.00	0.00
	Online research via Pacer for court docket report and documents.								
418981	12/22/2017	E112		3.33	1.00	3.33	3.33	1.00	3.33
	Court fees - Defendants Rule 91a Motion to Dismiss (EFILETX21463933)								
420013	01/03/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - Defendants' First Amended Answer (EFILETX21575373)								
420015	01/03/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - Notice of Hearing (EFILETX21569703)								
421176	01/05/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - CJP Vacation Letter (EFILETX21636232)								
427062	01/15/2018	E106		2.90	1.00	2.90	0.00	0.00	0.00
	Online research via Pacer for court docket report and documents.								
422476	01/18/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - Affidavit of Carrie Johnson Phaneuf on Attorney's Fees and Costs in Support of Defendant's Motion to Dismiss (EFILETX21894492)								
425093	01/19/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - Defendants Reply to Plaintiffs Response to Motion to Dismiss (EFILETX21931380)								
425135	01/22/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - Proposed Order on 91a Motion to Dismiss (EFILETX21981471)								

ID	Date	Tkpr/Exp	Activity Description	Worked Values Qty	Worked Values Rate	Worked Values Amount	Billed Values Qty	Billed Values Rate	Billed Values Amount
425141	01/23/2018	E112		3.33	1.00	3.33	0.00	0.00	0.00
	Court fees - Defendants Further Reply to Plaintiffs Supplemental Filings in Response to Defendants Motion to Dismiss Under Rule 91a (EFILETX22011469)								
427061	01/24/2018	E106		13.80	1.00	13.80	0.00	0.00	0.00
	Online research via Pacer for court docket report and documents.								
			Totals:	**59.07**		**59.07**	**13.46**		**13.46**
			Report Totals:			**34,827.57**			**13,208.46**

Electronically Filed 2/12/2018 3:39 PM
Stacey Kemp County Clerk
Collin County, Texas
By: Sharon Howard, Deputy
Envelope ID: 22467154

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al,	COUNTY COURT AT LAW
Plaintiffs,	NO. 5
v.	[Hon. Dan K. Wilson]
ATTORNEY LENNIE F. BOLLINGER, WORMINGTON & BOLLINGER LAW FIRM,	
Defendants.	COLLIN COUNTY, TEXAS

NOTICE OF HEARING FOR DEFENDANT'S MOTION FOR AN ORDER DETERMINING PLAINTIFF DARLENE AMRHEIN TO BE A VEXATIOUS LITIGANT AND REQUESTING SECURITY

TO THE HONORABLE JUDGE OF SAID COURT:

PLEASE TAKE NOTICE that *Defendant's Motion for an Order Determining Plaintiff Darlene Amrhein to be a Vexatious Litigant and Requesting Security*, filed on February 9, 2018, is set for hearing on **Tuesday, February 20, 2018 at 1:30 p.m.** in the 5th County Court at Law of Collin County, Texas.

Dated: February 12, 2018

Respectfully submitted,

By: */s/ Carrie J. Phaneuf*

CARRIE JOHNSON PHANEUF
Texas Bar No. 24003790
cphaneuf@cobbmartinez.com
JENNIFER SMILEY
Texas Bar No. 24082004
jsmiley@cobbmartinez.com

COBB MARTINEZ WOODWARD PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
Phone: 214.220.5201
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to Darlene Amrhein, *pro se*, by via electronic service through FileTime, e-mail, and priority mail on February 12, 2018.

Darlene Amrhein
112 Winsley Circle
McKinney, Texas 75071
Winsley112@yahoo.com

/s/ Carrie Johnson Phaneuf
CARRIE PHANEUF

original

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al — COUNTY COURT AT LAW

Plaintiffs,

V. — NO. FIVE (5) JUDGE WILSON

ATTORNEY LENNIE F. BOLLINGER, AND
WORMINGTON & BOLLINGER LAW FIRM — COLLIN COUNTY, TEXAS
Defendants, et al — Defendants

PLAINTIFF'S MOTION FOR RECUSAL OF JUDGE DAN WILSON

Comes Now, Plaintiff Darlene C. Amrhein to file Plaintiff's Motion For Recusal of Judge Dan Wilson in above named & titled Cause No. 005-02654-2017. Plaintiff does not file this Motion For Recusal of Judge Dan Wilson for any delay, bad faith or based on any Orders, but based on activities, actions, violations of laws. Plaintiff filed Motion To Stay & Continue this lawsuit after 2 emergencies in the hospital on 12/26/2017(Baylor Scott White Hospital) and 1/ 5/ 2018, (Medical Center of Plano) due to serious illness, 2 needed surgeries as disabled person, attached medical information as stated with medical proof, but still "denied." During this period of time this Court, Defendants & Attorneys demanded court filings on 1/02/2018 that contributed to this second emergency care & admission on 1/5/2018 & continued to make demands for court filings of documents to harass & injure Plaintiff Amrhein, which is a violation of ADA knowing who is unable to work, without additional injuries, illness as stated, unable to walk, stand or sit due to these disabilities, unstable spine, medicated & in extreme pain affecting function. I filed notice of medical on 1/3/2018 for "good cause" reasons for medical needs & sworn affidavit of the needs for medical healthcare treatment 1/10/2018. Plaintiff filed Motion To Stay & Continue this lawsuit on 1/10/2018 & court file stamped 1/16/2018 with more attached medical documentation as sick & disabled, which was denied by Court Order signed by Judge Wilson & supported by Cobb,

FILED
COUNTY COURT AT LAW
2018 FEB 13 AM 11:56
SUZANNE KEEP
COUNTY CLERK
COLLIN COUNTY, TEXAS

Martinez, Woodland, all these Attorneys & all 4 Defendants.

On January 22, 2018 as last day necessary demanded court filing caused another complication to Plaintiff along with nausea from the extreme pain and on January 26, 2018 Plaintiff ended back in the Medical Center of Plano again, seriously ill with pain & infection requiring stay until January 31, 2018, which was filed 2/3/2018 with Court as **Second Motion To Stay & Continue this Lawsuit** for medical reasons again with no response, except an Order 1/30/18 to destroy this lawsuit with prejudice to lawsuit & Plaintiff because of illness, disability, more demanded court filings, with $14,000.00 plus fine Order of attorneys' fees & then threats to Plaintiff by seizures & continued harassments if not paid by February 23, 2018, which is retaliation, while ill, sick, medicated, in pain & 3 times hospitalized as disabled person with "good cause" reasons for lack of function as continued by this Court, Defendants, Judge & Attorneys. Jury trial dates of February 19, 2018 or March 19, 2018 knowing that Plaintiff needed 2 high risk back operations, 6 months of full recovery with no court & suit activities for more pressure / harassment to prevent Plaintiff's medical treatments, several medications / narcotics & against Physicians medical instructions for Plaintiff's medical care is unconscionable to any reasonable person. Judge Dan Wilson is aware Plaintiff as in forma pauperis, so this was deliberate retaliation & harassment by his Court with only a social security monthly income for need of necessary support to live, more discrimination, knowing Plaintiff is disabled senior, unable to work, to affect my home, one automobile & needed healthcare. January 18, 2018 demand for hearing, demand for disclosures on January 25, 2018, with email of threats on or about February 7, 2018, which has continued to affect Plaintiff health, disability & illness discrimination of disability, American With Disabilities (ADA) protected rights are denied & refused by Court Order in the County Court at Law No. 5, by Judge Dan

Wilson, Defendants of Wormington Law Firm, Lennie Bollinger & 3 other Wormington attorneys, including Cobb, Martinez, Woodland & Attorney Carrie Johnston Phaneuf. (Email Harassment & Pressure with Retaliation to take advantages of these situation is unreasonable torture in this lawsuit that can cause addition able permanent disabilities affecting Plaintiff's life.)

IN CONCLUSION AND PRAYER

Plaintiff does not believe that a fair outcome could be attained in this case, due to "conflict of interest," basic Texas & federal laws & ADA violated, so a just outcome is not likely in this lawsuit with Judge Wilson presiding with confusions, discriminations, demands, prejudice & retaliations against due process, fairness & interest of Justice against ill needed medical care, Plaintiff Amrhein.

Judge Wilson has denied Plaintiff the right for healthcare as a disabled person, which is discrimination, therefore causing all lack of "trust for basic human & financial needs," which was reported to Department of Justice, Washington, D.C. by complaint, violations of my U.S. & Texas Constitutional Rights & by all these injustices. It appears that protecting the Defendants & their attorneys was more important then Plaintiff's healthcare, 3 hospitalizations & filed Motion to Stay & Continue this lawsuit on January 10, 2018. No person sick or well facing 2 high risk back operations, or any illness should be put under this kind of pressure as it has affected Plaintiff's health making it much worse & causing infectious disease delaying the 2 surgeries as complications & thousands of dollars of medical bills to Medicare ($100,000) that would threaten my life if surgery was done with any complications, which starts as "high risk" to begin with, but very necessary. The tracking of affects prior to each hospitalization, was court filings, demand, threats affecting Plaintiff health & well-being as personal injuries allowed to continue. The law clearly states that a reason to grant Motion To Stay & Continue a lawsuit

is for "illness or death," so no excuse to deny Plaintiff 1/10/18 stay court filing. Plaintiff believes this is hateful retaliations, discrimination, unnecessary & unfair, that no one should have to experience under these events & circumstances against federal ADA & Texas laws as a "protected class" with existing rules, statutes & laws, which is out of Plaintiff's control & would rather not have this all happen. Plaintiff requested the recusal voluntary, but after consideration of all activities, it appears that would never happen, so this Motion For Recusal of Judge Dan Wilson is necessary into this Court Record & well being of Plaintiff with a Stay & Continuance of this lawsuit following 2 back surgeries & release by Plaintiff's surgeons & primary doctors. Americans With Disabilities Act is federal law enforceable in all states, including Texas & very important, not to be refused or ignored making all activities & Orders "void" from January 10, 2018 to 1/16/2018. Plaintiff prays the original Motion To Stay & Continue this lawsuit as filed on January 10, 2018 & received through United States Post Office stands. All court actions taken beyond January 16, 2018 is "voided & reversed as legal nullity to have no affect & not be enforceable as prejudicial to Plaintiff, this lawsuit & all state & federal laws." Judge Dan Wilson & all other participants must be held responsible for violations of ADA & other laws. All harassments, demands & threats must be stopped immediately. Judge Dan Wilson must be recused in this lawsuit as a matter of law, against equal protection, appealable, against Rule of Law & intentional miscarriage of justice to discriminate against Plaintiff. (Exhibits 1 to 5) Emails received from January 15, 2018 to January 23, 2018 from Court & Attorneys was 22 notices. cc: United States Department of Justice

Respectfully submitted,

Darlene C. Amrhein

Darlene C. Amrhein, Plaintiff, Pro Se 2/8/18

VERIFICATION / AFFIDAVIT

NO. 005-02654-2017

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned Plaintiff, Darlene C. Amrhein, who swore in her capacity & individually on her sworn oath, deposed and said she prepared and signed Plaintiff's Motion For Recusal of Judge Don Wilson - ADA Complaint with Dept of Justice; DA

This information as referenced and stated within is true and correct and of Darlene C. Amrhein's own personal knowledge to best of her ability & documented. This state and or federal filing is for purpose of "due process," fairness, Justice under State and Federal Laws & presented in applicable Court attached as sited for this Court filing.

Darlene C. Balistreri-Amrhein

Darlene C. Balistreri- Amrhein, Plaintiff, Pro Se

SUBSCRIBED AND SWORN TO ME, BEFORE ME: ON February 3, 2018 to Certify which witness my hand and official seal.

SEAL:

TREVOR HILZ
My Commission Expires
May 1, 2019

Trevor L. Hilz

Notary Public of Texas (Printed Name)

Trevor L. Hilz

Notary Public of Texas (Signature)

Commission Expires May 1, 2019

5.

CERTIFICATE OF SERVICE

A true and correct copy of Plaintiff's Motion For Recusal Of Judge Dan Wilson was served in person or by Certified Mail through the United States Post Office on or about Feb. 8, 2018 to the following:

Collin County Courthouse — Certified 7017 0530 0000 6020

County Court at Law No. 5

Honorable Dan K. Wilson
Attn: Collin County District Clerk's Office
2100 Bloomdale Rd.
McKinney, TX 75071

Cobb, Martinez, Woodward, PLLC — Certified # 7017 0530 0000 6416 5948

Attorney Carrie Johnson Phaneuf

1700 Pacific Avenue, Suite 3100

Dallas, TX. 75201

CERTIFICATE OF CONFERENCE

There was no conference filed & served because Plaintiff is too sick, in pain & medicated from hospital discharge.

Respectfully submitted,

Darlene C. Balistreri-Amrhein

Darlene Balistreri-Amrhein, Plaintiff, Pro Se and

Representative for Deceased Anthony J. Balistreri

2/8/18

Subject: RE: 005-02654-2017; Amrhein, et al. v. Attorney Lennie F. Bollinger, et al. - TRE 408 Settlement Communication

From: Carrie Phaneuf (CPhaneuf@cobbmartinez.com)

To: winsley112@yahoo.com;

Cc: JSmiley@cobbmartinez.com;

Date: Wednesday, February 7, 2018 9:12 AM

Dear Ms. Amrhein:

On behalf of Lennie Bollinger and Wormington Law Group, PLLC d/b/a Wormington and Bollinger ("Defendants"), I have been authorized to make the following offer of settlement to you in the above matter:

In an effort to avoid any further expense of the litigation, and without admitting any wrongdoing, Defendants will agree to not pursue collection of the $14,130.60 in fees and costs awarded to them by the Court's January 30, 2018 Order on their Rule 91a Motion to Dismiss in exchange for your agreement that:

1. You will dismiss with prejudice all of your remaining claims in Cause No. 005-02654-2017 currently pending in the County Court at Law No. 5 of Collin County, Texas;
2. You will agree to execute a settlement agreement that releases any and all claims you have asserted or could have asserted against Defendants related to Anthony Balistreri, in your individual and representative capacity, as well as any and all claims you have asserted or could have asserted against Defendants related to the lawsuit against David Schroeder filed as Cause No. 01-SC-16-00165 in the Justice of the Peace, Precinct 1 of Collin County, Texas and later appealed to County Court at Law No. 2, Cause No. 002-2663-2017; and
3. You agree that the terms of the settlement will remain confidential.

This offer will remain open until 5:00 p.m. on February 13, 2018.

If you do not agree to this offer, please send certified funds in the amount of $14,130.60 made out to Cobb Martinez Woodward PLLC IOLTA Trust Account on or before February 28, 2018. The certified funds should be sent to my office address below and to my attention. Please note that if there is a failure to remit these funds, Defendants will use any and all legal remedies available to them to pursue collection of same.

I look forward to your response.

Sincerely,

Exhibit 1

FILED
COUNTY COURT AT LAW
2018 JAN 16 AM 11:06
COUNTY COURT AT LAW
STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
BY DEPUTY L. Howard

CAUSE NO. 05-02654-2017

DARLENE C. AMRHEIN, et al

Plaintiffs,

V.

ATTORNEY LENNIE F. BOLLINGER, AND
WORMINGTON & BOLLINGER LAW FIRM
Defendants,

NO. FIVE (5) JUDGE

COLLIN COUNTY, TEXAS

PLAINTIFF'S NOTICE TO THE COURT, SAID JUDGES, TO ALL DEFENDANTS AND THEIR COUNSELS TO STAY & CONTINUE THIS LAWSUIT REMOVING IT OFF THE ACTIVE DOCKET SHEETS FOR "GOOD CAUSE" REASONS

Plaintiff's Notice To The Court, Said Judges, To All Defendants And Their Counsels To Stay & Continue This Lawsuit Removing It Off The Active Docket Sheets For "Good Cause" Reasons as follows:

1. Plaintiff Darlene Balistreri-Amrhein has been in the Medical Center of Plano Hospital Emergency Room since January 4, 2018 & then admitted to present for multiple testing, examinations, various medications with a result of unable to walk & function normally with these disabilities;

2. Plaintiff Darlene Balistreri-Amrhein is required to have two serious back surgeries with various recovery periods from 6 weeks to 6 months depending upon the procedures used, which are necessary as demanded per medical evaluations;

3. Plaintiff Darlene C. Balistreri-Amrhein have the three best surgeons possible for these two operations that must be done separately to protect all regular & necessary functions, sitting, standing, walking, recovery & rehabilitations as removed for all caregiving as needed as shocked as to these results;

4. There were no prior notices for these two needed back operations;

5. See attached **Exhibit A** from the Medical City of Plano Doctor about these existing medical conditions that will be examined further with definite surgery

Exhibit 1
11 35

dates, procedures & pending additional evaluations on Tuesday, January 16, 2018 as Plaintiff is acting with "due diligence" & completely moved out of home on 1/17/18;

6. Plaintiff Balistreri-Amrhein cannot ignore this, be reduced to no walking & put health at risk, so it is impossible to continue this lawsuit, which must be stayed in the interest of justice as this is timely, fair notice to all parties until full recovery;

7. The Court, Judge Parties & counsels will be given updates as available every 30 to 45 days to project into future of this lawsuit;

8. There are many outstanding issues is this lawsuit & pending judicial work that cannot be completed at this time due to Plaintiff's medical conditions & surgeries;

9. All necessary steps will be taken to make Plaintiff as comfortable as possible, so the schedule is unknown along with all caregivers;

10. Plaintiff is sorry for any inconveniences & delays in this matter, which was out of any ones control. We cannot answer, proceed or rule in any manner effective immediately in this lawsuit;

11. Plaintiff is drugged most of the time due to intense pain & affects;

12. Plaintiff is asking the court to remove this lawsuit from the active docket sheet lists until I am able to proceed due to these 2 needed back surgeries & recovery with prompt notice to all parties; (Asking for prayers.)

13. Plaintiff is working hard to get back on her feet without any life long Disability or permanent harms caused as there is no other way except 2 surgeries; so please "stay all pending actions in this lawsuit until further notice;" (Exhibit A)

(Exhibit A, B)

Respectfully submitted,

Darlene C. Balistreri-Amrhein

Darlene C. Balistreri-Amrhein, Plaintiff, Pro Se

1/9/18

Exhibit 1
1/36

Medical City
Plano

3901 WEST 15TH STREET, PLANO TX 75075
972-596-1505

WORK / SCHOOL / SPORTS RELEASE

PATIENT NAME: Darlene Balistreri-Amphein

DATE: 1/9/18.

☐ THE PATIENT IS ABLE TO RETURN TO WORK/SCHOOL/SPORTS ON: _____

☐ THE PATIENT MAY RETURN TO WORK WITHOUT RESTRICTIONS.

☒ THE PATIENT MAY RETURN TO WORK ONCE RELEASED BY FOLLOW-UP PROVIDER.
Spine surgeon.

☐ OFF WORK/SCHOOL/SPORTS FOR _____ DAYS.

SIGNATURE: [signature]

To who it may concern,
Darlene Balistreri-Amphein was admitted to Medical City Plano on 1/4/2018 through the Emergency Department, for treatment, medications, testing with need for one or more surgeries. Recovery time is unknown at this time, while under medical care of several medical professionals. Please excuse all activity until further notice.

Exhibit A

COPY

Electronically Filed 1/3/2018 9:52 AM
Stacey Kemp County Clerk
Collin County, Texas
By: Linda Patrizio, Deputy
Envelope ID: 21569703

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al,	COUNTY COURT AT LAW
Plaintiffs,	NO. 5
v.	[Hon. Dan K. Wilson]
ATTORNEY LENNIE F. BOLLINGER, WORMINGTON & BOLLINGER LAW FIRM,	
Defendants.	COLLIN COUNTY, TEXAS

NOTICE OF HEARING FOR DEFENDANT'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

PLEASE TAKE NOTICE that Defendant's Motion to Dismiss, filed on December 22, 2017, is set for hearing on **Thursday, January 25, 2018 at 1:30 p.m.** in the 5th County Court at Law of Collin County, Texas.

Dated: January 3, 2018

Respectfully submitted,

By: */s/ Carrie J. Phaneuf*

CARRIE JOHNSON PHANEUF
Texas Bar No. 24003790
cphaneuf@cobbmartinez.com
JENNIFER SMILEY
Texas Bar No. 24082004
jsmiley@cobbmartinez.com

COBB MARTINEZ WOODWARD PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
Phone: 214.220.5201
Facsimile: 214.220.5251

ATTORNEYS FOR DEFENDANTS

Exhibit B Stayed

COPY

CAUSE NO. 05-02654-2017

DARLENE C. AMRHEIN, et al — COUNTY COURT AT LAW

Plaintiffs,

V. — NO. FIVE (5) JUDGE DAVIS

ATTORNEY LENNIE F. BOLLINGER, AND
WORMINGTON & BOLLINGER LAW FIRM — COLLIN COUNTY, TEXAS
Defendants,

Plaintiff's Motion For Continuance for "Good Cause" Reasons to Respond to Defendants' Motion To Dismiss

Comes Now, Plaintiff, Darlene C. Amrhein, pro se to file Plaintiff's Motion For Continuance for "Good Cause" Reasons to Respond to Defendants' Motion To Dismiss for the following:

1. Plaintiff received notice of Defendants' Motion To Dismiss on or about December 22, 2017, out of town for the holidays, family until December 25, 2017;

2. Plaintiff was then taken to Baylor, Scott, White Hospital in McKinney, Texas Emergency Room on or about December 26, 2017 & placed on 3 medications that affected capacity & driving causing numerous bouts of sleeping from pain killers, until all testing could continue & be completed with 24 to 48 hour turn around;

3. Plaintiff wants to respond & object to Defendants' Motion to Dismiss timely & is requesting an extension / continuance of 7 days to do so with a due date on January 4, 2018;

4. This 7 day continuance should cause no prejudice to Defendants & it would allow Plaintiff to function in full capacity for January 4, 2018 deadline;

5. Plaintiff contacted Attorney Carrie Johnson Phaneuf about motion for continuance for "good cause" reasons also affecting disabilities & diabetes.

Plaintiff prays for understanding & consideration in this matter, which was out of Plaintiff's control & serious.

FILED
COUNTY COURT AT LAW
2018 JAN -3 AM 10: 39
STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS

Respectfully submitted,

Darlene C. Amrhein

Darlene C. Amrhein, Plaintiff, Pro Se 12/29/17

Exhibit C

Electronically Filed 1/16/2018 4:42 PM
Stacey Kemp County Clerk
Collin County, Texas
By: Dianna Shine, Deputy
Envelope ID: 21854075

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al,	COUNTY COURT AT LAW
Plaintiffs,	NO. 5
v.	[Hon. Dan K. Wilson]
ATTORNEY LENNIE F. BOLLINGER, and WORMINTON & BOLLINGER LAW FIRM,	
Defendants.	COLLIN COUNTY, TEXAS

ORDER DENYING
"PLAINTIFF'S NOTICE TO THE COURT, SAID JUDGES, TO ALL DEFENDANTS AND THEIR COUNSELS TO STAY & CONTINUE THIS LAWSUIT REMOVING IT OFF THE ACTIVE DOCKET SHEETS FOR 'GOOD CAUSE' REASONS"

Before the Court is Plaintiff's document entitled "Plaintiff's Notice to the Court, Said Judge, to All Defendants and Their Counsels to Stay & Continue this Lawsuit Removing it off the Active Docket Sheets for 'Good Cause' Reasons," filed on January 16, 2018. Defendants filed a Response in Opposition.

After considering Plaintiff's Notice to the Court, Defendants' Response in Opposition, and relevant authority, the Court **ORDERS** as follows:

Plaintiff's Notice to the Court, filed on January 16, 2018, including her requests to stay this litigation and continue the hearing on Defendants' Rule 91a Motion to Dismiss is **DENIED**.

It is further **ORDERED** that Defendants' Rule 91a Motion to Dismiss is set for hearing by written submission on January 25, 2018.

It is **ORDERED** that Defendants are permitted to file and submit a Reply to Plaintiff's Response to the Motion to Dismiss by January 22, 2018.

Signed this 17 day of January, 2018.

Signed: 1/17/2018 09:58 AM

Dan K Wilson

JUDGE PRESIDING

Exhibit C

FALL RISK

...ct & applied to inside of armband.
...ied to outside of armband.
(2) ___ wise.

BALISTRERI-AMRHEIN, DARLENE C
E00990998226 PRE ER
DOB:07/18/46 71 F Medical City Plano E.ERMAJ MR# E000094035

[redacted]

Exhibit D

VERIFICATION / AFFIDAVIT

CAUSE NO. 005-02654-2017

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned Plaintiff, Darlene C. Balistreri-Amrhein, who swore in her capacity & individually on her sworn oath, deposed and said she prepared and signed Plaintiff's Notice To The Court, Said Judges, To All Defendants And Their Counsels To Stay & Continue This Lawsuit Removing It Off The Active Docket Sheets For "Good Cause" Reasons Effective Immediately.

This information as referenced and stated within is true and correct and of Darlene C. Balistreri-Amrhein's own personal knowledge to best of her ability & documented. This state and or federal filing is for purpose of "due process," fairness, Justice under State and Federal Laws & presented in applicable Court attached as sited for this Court filing.

Darlene C. Balistreri-Amrhein

Darlene C. Balistreri-Amrhein, Plaintiff, Pro Se

SUBSCRIBED AND SWORN TO ME, BEFORE ME: ON January 10, 2018 to Certify which witness my hand and official seal.

SEAL:

SEAN LOUGHLIN
Notary ID #129595393
My Commission Expires
October 16, 2021

Sean Loughlin

Notary Public of Texas (Printed Name)

Notary Public of Texas (Signature)

Commission Expires 10/16/2021

TO TEXAS STATE COURTS & U.S. FEDERAL COURTS:

DARLENE C. BALISTRERI-AMRHEIN AFFIDAVIT

THE STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared Darlene Balistreri-Amrhein, who being by me duly sworn, upon her oath deposed and stated as follows:

1. My name is Darlene C. Balistreri-Amrhein. I am over the age of eighteen years and am competent to make this Affidavit.

2. I make this Affidavit upon my personal knowledge and all statements contained herein are true and correct for all lawsuits, case numbers & case numbers.

3. At the time of this Affidavit, I am a McKinney, Texas resident homeowner as for more than the past 10 years, paying Collin County property taxes as required.

4. I, Darlene C. Balistreri-Amrhein have provided to the associated Texas Courts the following medical healthcare information for all needs as required effecting my responses to Courts, Counsels & Defendants in all lawsuits & causes of action.

5. I, Darlene C. Balistreri-Amrhein am disabled, unable to attend any hearings, prepare & answer any court filed documents, receive any mail, text messages or respond in any way due to these medical reasons, medical procedures, conditions, disabilities, medications, displacements, recovery & rehabilitations until further notice by myself & my primary care physicians as needed & released.

6. The medical release submitted as Exhibit A is true & correct as represented & filed with the associated Courts from Medical City Hospital of Plano & signed by nurses at instructions & signed by my personal physician as presented.

7. My back medical care physicians are three other doctors to be conducted for

Exhibit 2

each of two surgeries at different local area hospitals timely as Ordered, arranged & done with the best interest of Darlene C. Balistreri-Amrhein's healthcare due to all associated conditions, diagnosis, medical care & necessary requirements as prescribed by qualified medical professional for 6 months stay on inactive docket.

8. I, Darlene C. Balistreri-Amrhein, make this sworn Affidavit to be enforced & effective to all associated Courts, whether Texas state Courts & any United States Federal Courts associated to Darlene C. Balistreri-Amrhein with all Defendants.

9. By anyone suppressing this known information contained within would be considered fraud making every issue in violation of laws by secrecy & unlawful concealment with no legal effects to any lawsuit. There is to be no pressure, effects, interference or demands made upon any of Plaintiff Balistreri-Amrhein's physicians / surgeons for any reason or violations of HIPPA laws.

10. I, Darlene C. Balistreri-Amrhein, have provided all courts, judges, Counsels & Defendants names & contacts to my personal representatives in case I become in capacitated & or under life availability through death for contacts & notifications.

11. I, Darlene C. Balistreri-Amrhein, make this sworn affidavit of my own free will, to provide all information necessary for informed decisions in all lawsuits as there was no other alternative to facts & reality with aid of healthcare professionals under these circumstances & in interest of fairness, due process & Justice as Plaintiff, Pro Se in all lawsuits & Exhibit A as attached.

Further affiant sayeth

Executed this 10th day of January, 2018

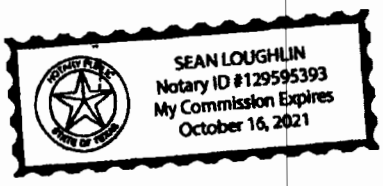
Darlene C. Balistreri-Amrhein

Darlene C. Balistreri-Amrhein

SUBSCRIBED AND SWORN TO before me on this 10th day of January, 2018

Exhibit 2

SEAL



Sean Loughlin

Notary Public of Texas Printed

Notary Public of Texas Signature

Commission Expires 10/16/2021

Exhibit 2

Electronically Filed 1/22/2018 4:50 PM
Stacey Kemp County Clerk
Collin County, Texas
By: Dianna Shine, Deputy
Envelope ID: 21981471

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al,	COUNTY COURT AT LAW
Plaintiffs,	NO. 5
v.	[Hon. Dan K. Wilson]
ATTORNEY LENNIE F. BOLLINGER, AND WORMINTON & BOLLINGER LAW FIRM,	
Defendants.	COLLIN COUNTY, TEXAS

ORDER GRANTING DEFENDANTS LENNIE F. BOLLINGER AND WORMINGTON & BOLLINGER'S RULE 91A MOTION TO DISMISS

On this day, the Court considered Defendants Lennie F. Bollinger and Wormington & Bollinger's ("Defendants") Motion to Dismiss, pursuant to Rule 91a of the Texas Rules of Civil Procedure, filed on December 22, 2017. Plaintiff Darlene Amrhein in her individual capacity and in her representative capacity on behalf of Anthony Balistreri (collectively "Amrhein" or "Plaintiff"), filed a Response on January 2, 2018. Defendants filed a Reply to Plaintiff's Response on January 19, 2018. After careful consideration of Plaintiff's Amended & Supplement Petition and Pleadings, Defendants' Rule 91a Motion to Dismiss, Plaintiff's Response to the Motion to Dismiss, and Defendants' Reply, and relevant legal authority, the Court rules as follows:

a. It is **ORDERED** that Defendants' Rule 91a Motion is **GRANTED**.

b. Therefore, it is **ORDERED** that the following causes of action or purported causes of action are **DISMISSED WITH PREJUDICE**: (i) all of the causes of action brought in Amrhein's representative capacity of Anthony Balistreri, deceased, or his estate or trust, (ii) Violations of the Texas Disciplinary Rules of Professional Conduct, (iii) Breach of Fiduciary Duty, (iv) Breach of Contract, (v) Fraud, (vi)

Exhibit 3 146

Violations of the DTPA, (vii) Violations of the Texas Rules of Civil Procedure, (viii) "Bad Faith," (ix) Negligent Misrepresentation, (x) Conspiracy, (xi) violations of constitutional rights, and (xii) alleged discrimination.

c. Plaintiff is **ORDERED** to file an amended petition removing the dismissed causes of action from her petition within 20 days of the date of this Order. Failure to comply with this Order may result in a dismissal of this case.

d. The Court finds that the amount of fees incurred by Defendants for defense of this matter through the date of the hearing is reasonable and necessary. It is hereby **ORDERED** that Defendants' request for attorney fees and costs pursuant to Tex. R. Civ. Proc. 91a.7 is **GRANTED**. Attorney fees and costs in the amount of $14,101.55, plus $29.05 in expenses, are awarded to Defendants. Plaintiff is hereby **ORDERED** to pay $14,130.60 to Defendants. Execution may issue on all sums awarded.

Signed this 30 day of January, 2018.

Signed: 1/30/2018 10:20 AM

Dan K. Wilson

JUDGE PRESIDING

Exhibit 3

COUNTY COURT AT LAW NUMBER FIVE
JUDGE DAN WILSON
2100 Bloomdale Road, Suite 20382
McKinney, Texas 75071
Phone: (972) 548-3850
Fax: (972) 548-3855

The enclosed Discovery Control Plan and Scheduling Order must be signed by all parties and returned to the Coordinator by 4:00 p.m. the day prior to the Pre-trial Conference date. If not, your presence is required at the Pre-trial Conference. If you cannot be at the pre-trial conference promptly at the time specified, you must fax in your announcement to the Court by 5:00 p.m. on the previous day. You may fax the plan and/or trial announcement to (972) 548-3855. ***The following dates are subject to change.***

Bench Trial Dates at 1:30 p.m.	**Formal Pre-Trial at 10:00 a.m.**
January 18, 2018	**January 11, 2018 (if needed)**
February 22, 2018	**February 15, 2018 (if needed)**
March 22, 2018	**March 15, 2018 (if needed)**

Jury Trial Dates at 9:00 a.m.	**Formal Pre-Trial at 10:00 a.m.**
January 16, 2017	**January 11, 2018 (required)**
February 19, 2018	**February 15, 2018 (required)**
March 19, 2018	**March 15, 2018 (required)**

You may check the status of civil cases by visiting www.collincountytx.gov. Under departments, click on Online Services, then click Case Look up - Civil or by calling the civil clerk at (972) 548-6432.

Exhibit 4

COUNTY COURT AT LAW 5 FOR
Collin County, Texas
DAN K WILSON, JUDGE PRESIDING

December 13, 2017

Darlene Amrhein
112 Winsley Circle
McKinney TX 75071

RE: Cause No. 005-02654-2017
Darlene C. Amrhein, et al VS. Attorney Lennie F. Bollinger and Worminton & Bollinger Law Firm

Dear Darlene Amrhein; Anthony Balistreri (deceased) and Carrie J. Phaneuf; Carrie J. Phaneuf; All Professional Liability & Legal Malpractice Insurance Companies:

The above referenced matter is set for pre-trial conference on January 18, 2018 at 1:30 pm in Collin County Court at Law 5. Enclosed is a schedule of dates that are available for jury trials and/or bench trials along with a scheduling order. **In lieu of appearing at the pre-trial conference, you may E-file the enclosed *agreed* scheduling order no later than 4:00 pm, January 16, 2018.** If the scheduling order is not received by that time, your presence is required at the pre-trial conference. ***If a scheduling order cannot be agreed upon, the presence of both parties is required.*** **Your failure to attend the pre-trial conference will result in your case being dismissed.**

Pre trial conference and formal pre trial are not the same. The first pre-trial conference is simply to set trial dates. If you schedule a formal pre-trial, both parties must appear and comply with the discovery control plan and scheduling order. If the parties fail to show up at the Formal Pre-Trial the case may be dismissed for want of prosecution.

Mediation is required. Parties shall within ten (10) business days of the date of the pretrial conference, submit an agreed written order designating a mediator or a written certification that mediation would not result in resolution or settlement. For your convenience, you may also designate a mediator in section f. of the Discovery Control Plan.

You may check the status of civil cases, service, payment of fees, filing and other settings, by calling the civil clerk at 972-548-6432 or by visiting www.collincountytx.gov. Click on "Online Services" then select "Case Record Inquiry – Advanced. Under "Select a Location" you will select "Civil and Family Case Records." You are encouraged to check these locations before contacting the coordinator.

Sincerely,

Dan K. Wilson

Dan K. Wilson
Judge Presiding

County Court at Law 5 2100 Bloomdale Road, Suite 20382, McKinney, TX 75071 972-548-3850
tcaton@co.collin.tx.us

Exhibit 4

CMW

COBB MARTINEZ WOODWARD

Carrie J. Phaneuf
214.220.5206

214.220.5256 | direct fax
cphaneuf@cobbmartinez.com

January 10, 2018

Via Priority Mail
Darlene Amrhein
112 Winsley Circle
McKinney, TX 75071

Re: *Amrhein v. Bollinger, et al; Cause No. 005-02654-2017 in the Collin County Court at Law No. 2, Collin County, Texas.*

Dear Ms. Amrhein:

As noted in my e-mail correspondence dated January 5, 2018 as well as January 9, 2018, the court has scheduled a pre-trial conference for Thursday, January 18, 2018. In lieu of appearing we are allowed to submit Agreed Scheduling Order no later than 4 p.m. on Tuesday, January 16, 2018. Enclosed please find a copy of the letter from the court as well as a proposed Agreed Scheduling Order for your consideration. Please review the order and let me know if you have any revisions. If not, please sign the document in the space provided and return to me for filing with the court.

Additionally, the court requires all parties to attend mediation and submit and agreed order selecting a mediator within ten (10) days of the pre-trial conference. If you have any preferred candidates you would like to nominate as possible mediators for this matter, please let me know.

Sincerely,

Carrie Johnson Phaneuf

CJP:klh
CMW175467v1

1150 Exhibit 5

Kimberly Harrison

From: Kimberly Harrison
Sent: Thursday, January 25, 2018 12:16 PM
To: winsley112@yahoo.com
Cc: Carrie Phaneuf; Jenny Smiley
Subject: 005-02654-2017; Amrhein, et al. v. Attorney Lennie F. Bollinger, et al.
Attachments: 2018-01-25 RFD to Plaintiff.pdf

Ms. Amrhein,

Attached please find *Defendants' Request for Disclosure to Plaintiff* e-served today with the court in regard to the above-referenced matter.

A copy has also been forwarded to you via USPS Priority Mail.

Thank you,

CMW

Kimberly Harrison
Legal Secretary to Bill Cobb and Carrie Phaneuf
Cobb Martinez Woodward PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
(214) 220-5211 direct
(214) 220-5261 fax
kharrison@cobbmartinez.com
www.cobbmartinez.com

Exhibit 5

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al, Plaintiffs, v. ATTORNEY LENNIE F. BOLLINGER, AND WORMINTON & BOLLINGER LAW FIRM, Defendants.	COUNTY COURT AT LAW NO. 5 [Hon. Dan K. Wilson] COLLIN COUNTY, TEXAS

DEFENDANTS'
REQUEST FOR DISCLOSURE TO PLAINTIFF

TO: Plaintiff, Darlene Amrhein, 112 Winsley Circle, McKinney, TX 75071.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194, you are requested to disclose within thirty (30) days of service of this request, the information or material described in Rule 194.2, specifically described below:

REQUEST NO. 194.2(a): The correct names of the parties to the lawsuit.

REQUEST NO. 194.2(b): The name, address, and telephone number of any potential parties.

REQUEST NO. 194.2(c): The legal theories and, in general, the factual basis of the responding party's claims or defenses.

REQUEST NO. 194.2(d): The amount and any method of calculating economic damages.

REQUEST NO. 194.2(e): The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

1152 Exhibit 5

REQUEST NO. 194.2(f): For any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and,

(B) the expert's current resume and bibliography.

REQUEST NO. 194.2(g): Any discoverable indemnity and insuring agreements.

REQUEST NO. 194.2(h): Any discoverable settlement agreements.

REQUEST NO. 194.2(i): Any discoverable witness statements.

REQUEST NO. 194.2(j): All medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills.

REQUEST NO. 194.2(k): All medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

REQUEST NO. 194.2(l): The name, address and telephone number of any person who may be designated as a responsible third party.

Respectfully submitted,

By: */s/ Carrie Johnson Phaneuf*

CARRIE JOHNSON PHANEUF
Texas Bar No. 24003790
cphaneuf@cobbmartinez.com
JENNIFER SMILEY
Texas Bar No. 24082004
jsmiley@cobbmartinez.com

COBB MARTINEZ WOODWARD PLLC
1700 Pacific Avenue, Suite 3100
Dallas, Texas 75201
(214) 220-5201
(214) 220-5251 (Fax)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to *pro se* plaintiff either by email, and/or regular U.S. mail on this 25th day of January 2018.

Darlene Amrhein
112 Winsley Circle
McKinney, Texas 75071
Winsley112@yahoo.com

/s/ Carrie Johnson Phaneuf
CARRIE JOHNSON PHANEUF

Subject: RE: 005-02654-2017; Amrhein, et al. v. Attorney Lennie F. Bollinger, et al. - TRE 408 Settlement Communication

From: Carrie Phaneuf (CPhaneuf@cobbmartinez.com)

To: winsley112@yahoo.com;

Cc: JSmiley@cobbmartinez.com;

Date: Wednesday, February 7, 2018 9:12 AM

Dear Ms. Amrhein:

On behalf of Lennie Bollinger and Wormington Law Group, PLLC d/b/a Wormington and Bollinger ("Defendants"), I have been authorized to make the following offer of settlement to you in the above matter:

In an effort to avoid any further expense of the litigation, and without admitting any wrongdoing, Defendants will agree to not pursue collection of the $14,130.60 in fees and costs awarded to them by the Court's January 30, 2018 Order on their Rule 91a Motion to Dismiss in exchange for your agreement that:

1. You will dismiss with prejudice all of your remaining claims in Cause No. 005-02654-2017 currently pending in the County Court at Law No. 5 of Collin County, Texas;
2. You will agree to execute a settlement agreement that releases any and all claims you have asserted or could have asserted against Defendants related to Anthony Balistreri, in your individual and representative capacity, as well as any and all claims you have asserted or could have asserted against Defendants related to the lawsuit against David Schroeder filed as Cause No. 01-SC-16-00165 in the Justice of the Peace, Precinct 1 of Collin County, Texas and later appealed to County Court at Law No. 2, Cause No. 002-2663-2017; and
3. You agree that the terms of the settlement will remain confidential.

This offer will remain open until 5:00 p.m. on February 13, 2018.

If you do not agree to this offer, please send certified funds in the amount of $14,130.60 made out to Cobb Martinez Woodward PLLC IOLTA Trust Account on or before February 28, 2018. The certified funds should be sent to my office address below and to my attention. Please note that if there is a failure to remit these funds, Defendants will use any and all legal remedies available to them to pursue collection of same.

I look forward to your response.

Sincerely,

Exhibit 5

Carrie Phaneuf

Attorney for Defendants

cid:image

Carrie Johnson Phaneuf

Cobb Martinez Woodward PLLC

1700 Pacific Avenue, Suite 3100

Dallas, Texas 75201

(214) 220-5206 direct

(214) 220-5256 fax

cphaneuf@cobbmartinez.com

www.cobbmartinez.com

Attachments

- image001.png (2.55KB)

Exhibit 5

Cause Number: 005-2654-2017

Darlene Amrhein, et al	§	In the County Court
Vs.	§	at Law Number 5
Attorney, Lennie F. Bollinger and Wormington & Bollinger Law Firm	§	Collin County, Texas

ORDER OF REFERRAL ON MOTION TO RECUSE

A motion to recuse having been presented to me in the above styled and numbered cause, I respectfully

__X___ decline to recuse myself and request the Presiding Judge of the First Administrative Region to assign a judge to hear the Motion to Recuse, or

_____ recuse myself and request that the Presiding Judge of the First Administrative Region assign a judge to hear the above case.

All pursuant to the provisions of Rule 18a T.R.C.P.

ORDERED THIS 13th DAY OF February, 2018.

Dan K. Wilson

Judge Presiding

original

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al — COUNTY COURT AT LAW

Plaintiffs,

V. — NO. FIVE (5) JUDGE WILSON

ATTORNEY LENNIE F. BOLLINGER, AND
WORMINGTON & BOLLINGER LAW FIRM — COLLIN COUNTY, TEXAS
Defendants, et al — Defendants

PLAINTIFF'S TIMELY NOTICES AND VARIOUS OBJECTIONS ON UNLAWFUL & ILLEGAL ACTIVITIES IN THIS LAWSUIT FOR "GOOD CAUSE" REASONS

Comes Now, Plaintiff, Darlene C. Amrhein, to file Plaintiff's Timely Notices And Various Objections On Unlawful & Illegal Activities In This Lawsuit for "Good Cause" Reasons as follows:

I. NOTICES AND VARIOUS OBJECTIONS ON UNLAWFUL ACTS

1) Plaintiff gives notices & objections to understand Plaintiff's pleadings;

2) Plaintiff makes this First Amended Pleadings under duress by Judge Dan Wilson's January 30, 2018 invalid, unlawful & illegal activities/ Order to preserve all rights under Federal & Texas Laws & for purpose of Appeal;

3) This January 30, 2018 Order is "legal nullity & void" under the law & lacks Plaintiff's U.S. & Texas Constitutional Rights as stated & promised;

4) Plaintiff filed two Motions To Stay & Continue this lawsuit from January 10, 2018 to January 31, 2018 & February 3, 2018, which was denied & ignored by Judge Dan Wilson in violation of federal law, American With Disabilities Act – ADA & Rehabilitation Act, which is valid in the State of Texas for ill Plaintiff Amrhein as disabled ill person in need of medical care & 2 Back surgeries;

5) Judge Wilson exhibited discrimination of Plaintiff's disabilities, illness, need for 2 surgeries, in forma pauperis, violated Federal & Texas Laws & retaliated against Plaintiff with demands to continue harassment & assaults by his acts;

FILED
COUNTY COURT AT LAW
2018 FEB 13 PM 3:19
STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
DEPUTY

6) Plaintiff has filed objections to the illegal & unlawful acts of Judge Wilson as Obstruction of Justice & Fraud Upon the Courts, reported complaints & Motion For Recusal filed January 16, 2018, February 3, 2018 & February 12, 2018 with no response to date;

7) Plaintiff has the right to Appeal the January 30, 2018 Order by Judge Wilson;

8) Under Motion For Stay & Continuance illness & death is valid as Plaintiff has supplied Judge Wilson with various medical documentation of illness, hospitalization & pending 2 back surgeries, plus a personal sworn affidavit as timely Court filed;

9) The date of Motion To Stay & Continue this lawsuit & place on inactive docket was January 10, 2018 as mailed through United States Post Office & Court file stamped January 16, 2018, which was weeks before this January 30, 2018 Order.

10) Judge Wilson's protection for Defendants & their Attorneys is obvious that he would violate federal law ADA to deny Plaintiff's needed healthcare to hear Defendants Motion To Dismiss under TRCP 91a because of pending 60 day deadline, which is Obstruction of Justice, discrimination & Fraud Upon The Court;

11) Judge Wilson is suppose to be impartial, un bias trier of fact, but not true, which demonstrates "conflict of interest," bias, prejudice & retaliation against this lawsuit & Plaintiff with violations of Federal & Texas ADA as required;

12) Judge Wilson declared filings until January 22, 2018, then used a filing from Defendants' Attorney from January 23, 2018 to base his Jan. 30, 2018 Order; Order unfairly on suit that must have been Stayed & Continued January 16, 2018;

13) Plaintiff received over 22 emails from this Court & Defendants' Attorneys in 7 days from January 16, 2018 knowing of illness, ADA protection & medical care, which is harassment & demands to further injure, causing additional Medicare bills for hospitalization intentionally; (Dec. 26, 2017, Jan. 4, 2018, Jan. 26, 2018)

14) The January 26, 2018 hospitalization occurred 10 days after Motion To Stay & Continue of This Lawsuit on the inactive docket sheet, which this judge denied;

15) On January 22, 2018 as required Plaintiff filed direct evidence in this lawsuit & it was examined by Judge Wilson over an 8 day period, still denied by only speculation as ordered by Defendants' Attorney, showing more bias & prejudice;

16) It appears Judge Wilson did not take his oath of office seriously & engages in "abuse of discretion" & no enforcement of all laws & Constitutions, with favors & "conflict of interest," prejudice, bias & retaliation against Plaintiff for being ill, pro se & poor;

17) On February 2, 2018 as filed Plaintiff's Response to January 30, 2018 Order On Motion To Dismiss Portions of This Lawsuit That Is Challenged By Motion For Reconsideration For "Good Cause" Reasons is file stamped Feb. 6, 2018, but removed from Court Record & returned to Plaintiff all filings to prevent proof of objections, reconsideration & errors for Appeal as signed by S. Howard, 40 pages long with three exhibits & complaint filed (Certified # 7017 0530 0000 6416 5979)

18) Defendants' Attorney complains to Court that they are not receiving timely service from Plaintiff as mailed through United States Post Office mailed on January 10, 2018 & not received until January 16, 2018 with a national holiday;

19) Plaintiff was confused by long delay on mail to Defendants Attorneys Cobb Law firm & was informed it was not held by Post Office, but that they were not picking up their mail timely for days, so this was a known false representation to this Court about Plaintiff Certified Mail; (Certified #7017 0530 0000 6416 5986) It does not take 7 to 9 days to mail from McKinney to Dallas, so falsity claimed; This is the same Court filing that was returned by Court Clerk & no record copies;

20) It appears that the Court / Judge & Defendants' Attorney are hiding Plaintiff's responses to the illegal activities in this lawsuit on this January 30, 2018 Order;

21) The action of manipulating this court record is illegal & shows "conspiracy" between this Court, Judge Wilson, Defendants & their Attorneys Cobb Law Firm by not accepting Plaintiff's timely court filings to prevent reversal on Appeal;

22) Plaintiff is not removing the claim of Deceased Anthony J. Balistreri, who is represented by himself, Attorney Stuart Kalb, Attorney Laurie Peck & Plaintiff's new Attorney, so this January 30, Court Order is incorrect, false & Appealable as stated in an effort to remove the" automatic wrong doing" & legal malpractice by Defendants to refuse to turn over Anthony Balistreri case file & knowingly holding it past "statute of limitations" to prevent the right to litigate his wrongful death, etc.

23) It appears that Plaintiff Amrhein is in a no win situation no matter what is done & filed, as Cobb Law Firm would like to take additional advantage of Plaintiff's illness, disability, 2 back operations for their own benefit to get the Defendants' off & charge Plaintiff for their illegal acts, harassments, violations of Laws, rights with continued personal injuries & harassment violating ADA laws;

24) It appears there may be a form of a bribe in this case by all the illegal, unlawful activities & "conflict of interest, bias & prejudice, retaliation in various forms, which is against the law by anyone & especially this judge;

25) Plaintiff Motion For Stay & Continuance of this lawsuit on inactive docket is still in affect from January 16, 2018 making January 30, 2018 Order void as not optional, but "abuse of discretion & will be over turned, a civil lawsuit filed & formal complaint filed with Collin County ADA Compliance Person;

26) Motion To Dismiss by TRCP 91a Order on January 30, 2018 is "void" as facts, there was no hearing timely within 60 days as required, Federal ADA laws violated for illness of disabled Plaintiff required Stay as of January 16, 2018, there is "conflict of interest, bias, prejudice, retaliation demonstrated, an appearance of a form of bribery, manipulation of court filed documents, hidden evidence & an

outstanding Motion To Recuse Judge Dan Wilson for various reasons stands in this lawsuit for "Obstruction of Justice & Fraud Upon Court to date;

II. Americans with Disabilities Act (ADA)

27) In accordance with Title II of the Americans with Disabilities Act of 1990 (ADA), Collin County will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Requests for Aid, Service, or Policy Modification: Generally, upon request and at no cost to the requestor, Collin County will provide appropriate communication aids and services and make reasonable modifications to its policies and procedures to ensure that qualified persons with disabilities have an equal opportunity to participate in Collin County's programs, services, and activities.

A person may request such aids, services, or policy modifications by calling **972-548-4631** or emailing**publicrelations@collincountytx.gov** as soon as possible, but no later than 48 hours before any scheduled event.

The ADA does not require Collin County to take any action that would fundamentally alter the nature of its programs or services or that would impose an undue financial or administrative burden.

Grievance Procedure

This Grievance Procedure is established to meet the requirements of the ADA for resolving nonemployment-related complaints of disability discrimination. Any person may file a complaint alleging disability discrimination by Collin County in its provision of services, activities, programs, or benefits. Collin County will retain all written complaints for three years.

Complaint: A complaint may be made by sending a written communication of any type (email, letter, fax), providing the name, address, and phone number of the grievant and the location, date, and description of the problem. If a written complaint is not possible, alternative means are available upon request for a person with a disability. The complaint should be submitted as soon as possible but no later than 60 calendar days after the alleged violation to:

Collin County Administration / ADA Coordination
2300 Bloomdale Road, Suite 4192, McKinney, TX 75071
Phone: 972-548-4631

Fax: 972-548-4699
Email: publicrelations@collincountytx.gov

The ADA Coordinator will contact the grievant within 15 calendar days to discuss the complaint and possible resolutions. Within 15 calendar days of that meeting, the ADA Coordinator will respond to the grievant in writing, and, when appropriate, in a format accessible to the grievant. The response will explain Collin County's position and offer options for substantive resolution.

Appeal: If the ADA Coordinator's response does not satisfactorily resolve the issue, the grievant may appeal the decision within 15 calendar days of receiving it to the **Collin County Administrator** at the same address as above. The Collin County Administrator will contact the grievant within 15 calendar days to discuss the complaint and possible resolutions. Then, within 15 calendar days of that meeting, the Collin County Administrator will respond in writing, and, when appropriate, in a format accessible to the grievant, with a final resolution of the complaint.

Suit brought alleging violation of title II of the ADA and section 504 of the Rehabilitation Act *Prakel v. State of Indiana*, 2013 WL 3287691 (S.D. Ind. June 28, 2013).

The State can to be forced to waive its sovereign immunity if Congress says so and if it is consistent with the enforcement clause of the equal protection clause to the U.S. Constitution when it comes to the courts, a forced waiver is likely to be upheld because Congress has waived sovereign immunity with respect to the ADA and because access to courts is a fundamental right. *Tennessee v. Lane*, 541 U.S. 509, 522, 524, 529, 531, 534 (2004).

Also sue under § 504 of the Rehabilitation Act as there are court opinions out there that say receipt of federal funds waives sovereign immunity. (title II of the ADA and § 504 of the Rehabilitation Act)

The plaintiff can depose sitting judges who were or may have been involved in the process of deciding not to accommodate the plaintiff.

The State, Court, and Circuit Courts, should have a § 504 compliance system in place as well as a compliance system in place for title II of the ADA matters (since all these entities have more than 50 employees, by law they are required to have a § 504/ADA coordinator designated and a § 504/ADA grievance procedure).

If system had been in place or utilized, including proper training of course, then in the end, all the judges and administrators being deposed would not have been necessary. It is hard to believe on the merits (both § 504 and title II of the ADA), that should not of been provided in the first place.

Plaintiff Amrhein has filed a direct complaint with the Department of Justice, Washington D.C, been interviewed for denial of Plaintiff Motion To Stay & Continue this lawsuit as discriminated against my disabilities & need for 2 back surgeries & caused personal injuries.

Plaintiff has filed a formal complaint with In accordance with Title II of the Americans with Disabilities Act of 1990 (ADA), Collin County will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Plaintiff Amrhein left a voice mail message to the Collin County ADA Coordinator for this Court House explaining my situation, disability & denied ADA accommodations for my needed healthcare that has been refused, along with formal complaint at Department of Justice & possible lawsuit;

Collin County Administration / ADA Coordination
2300 Bloomdale Road, Suite 4192, McKinney, TX 75071
Phone: 972-548-4631
Fax: 972-548-4699

Appeal: If the ADA Coordinator's response does not satisfactorily resolve the issue, the grievant may appeal the decision within 15 calendar days of receiving it to the **Collin County Administrator** at the same address as above. The Collin County Administrator will contact the grievant within 15 calendar days to discuss the complaint and possible resolutions. Then, within 15 calendar days of that meeting, the Collin County Administrator will respond in writing, and, when appropriate, in a format accessible to the grievant, with a final resolution of the complaint or Plaintiff can file a civil lawsuit against Collin County Court System & all involved.

III. PLAINTIFF'S TIMELY TEMPORARY 1ST AMENDED PLEADINGS

1) Plaintiff is hiring an Attorney in this lawsuit for representations of Plaintiff Amrhein & Plaintiff Anthony J. Balistreri, so they can Amend Pleadings when notice of appearance is given to the Court as this Amended Pleading as is just temporary as demanded by this Court Judge & Defendants' Attorney during Stay;

IV. ANTHONY J. BALISTRERI'S STATUTE OF LIMITATIONS LAWSUIT

2) **Anthony J. Balistreri** as deceased is represented as follows in this lawsuit:

a) **Attorney Stuart Kalb** with 35 years of experience & as an expert witness with direct knowledge of Plaintiff Balistreri, his estate & all estate planned records;

b) **Attorney Laurie Peck** as experienced Attorney, witness & notary with direct knowledge & estate planning of Plaintiff Anthony J. Balistreri's estate records;

c) **Anthony J. Balistreri will represent himself** & testify by an almost 1 hour auto & visual CD in his estate planning preparation, wishes & statements before Attorney Stuart Kalb, Attorney Laurie Peck and two separate witnesses as present with direct knowledge & as signed in these documents & as witnessed in this CD;

d) **Financial Advisor Richard Dean** as witness & with direct knowledge of Anthony Balistreri, years of personal interaction & as financial consultant expert;

e) **Darlene C. Amrhein** as the 10 year plus caregiver to Anthony J. Balistreri 24/7 & as Court appointed Guardian to him from 2006 until his death Sept. 24, 2013;

f) **Collin County Probate Judge Weldon Copeland** as witness to testify to Probate Court annual reports during 2006 to 2013 guardianship with Anthony J. Balistreri & Darlene C. Amrhein until September 24, 2013 death;

g) **Exhibits** of all trust documents as prepared by professionals, all guardianship documents, all medical records, all audio tapes of his doctors' & all conditions of nursing home with various witnesses that observed Anthony Balistreri from July 26, 2013 until October 3, 2013 while alive & after his death to burial to prove this lawsuit within a lawsuit to demonstrate this case & losses that would have been won if not for the harms & injuries by Attorney Bollinger, Wormington Law Firm & all 4 Defendants within Wormington Law Firm as served in process;

h) **Anthony J. Balistreri's primary care physicians**, heart specialist, surgeons will be called to testify to their direct knowledge & conditions of him while alive;

i) Subpoena of the Nursing Home Management & Staff as to Anthony J. Balistreri & their direct knowledge of him before his death on September 24, 2013, all medications, neglect, injuries, harms, beatings, starvation, loss of about 46 pounds in 6 weeks, drugging, bodily harm, condition when released to emergency room of Presbyterian Hospital Dallas & then transferred to intensive care;

j) Presbyterian Hospital Dallas Management, 3Physicians, ER hospital staff, & intensive care nursing staff will be witnesses in this lawsuit on death of Anthony J. Balistreri, along with custodian of all of his medical records;

k) Close friend Karen Brandt with direct knowledge & inter action with Anthony J. Balistreri before & after his death on Oct. 3, 2013;

l) Witness by subpoena who witnessed Anthony J. Balistreri drugged & restrained, starved & tied in a wheel chair, while in the nursing home with records;

m) Dallas Police Reports filed by Anthony J. Balistreri & Darlene Amrhein from July 26, 2013 to October 15, 2013 for abuse & death of Anthony J. Balistreri;

n) Officials of Government complaints on behalf of Anthony J. Balistreri abuses in nursing home done by Darlene C. Amrhein as care giver;

o) Adult Protective Services for abuses of Anthony Balistreri July 2013 to death;

p) Subpoena of Hospital staff from July 26, 2013 to September 15, 2013;

q) Subpoena of all Medicare & United Healthcare reporting of abuses of Anthony J. Balistreri to insurance representatives;

r) Subpoena of Reports of Medicare Frauds by two Nursing Home physicians as related to Anthony J. Balistreri contributing to his death;

s) 3 Other local nursing homes that interviewed Plaintiff Amrhein on abuses of Anthony J. Balistreri;

t) Conformation of throwing out Anthony J. Balistreri food as sent by Darlene Amrhein, theft of his personal belonging & other abuses from July 26, 2013 to

September 24, 2013;

u) **Colored pictures** of Anthony J. Balistreri's physical injuries, bruises & beatings from July 26, 2013 to September 24, 2013 in nursing home, Dallas, Texas;

v) **All therapy records,** medical records & complaint records prepared & certified

All of these a to v will prove that the Anthony J. Balistreri lawsuit would have been won, if not for the damages, harms, delays of Defendants by ignoring known "statute of limitations;"

V. DAVID SCHROEDER LAWSUIT

3) **On the David Schroeder Lawsuit** known as Case No. 01-SC-16-00165, that Defendants failed to represent Plaintiff Amrhein, filed in the wrong Court, in the wrong jurisdiction, for the wrong amount, refused to communicate for months, refused to correct errors, refused to turn over complete client file, refused to mediate, refused to file for jury trial, refused to add assault charges, "conflict of interest," threats made to Plaintiff Amrhein, that too is a lawsuit within a lawsuit that would have been won, if not for the damages, harms & injuries caused by the Wormington Law Firm & all Defendants within, causing this lawsuit;

a) **Plaintiff Amrhein will provide exhibits** of Mr. Schroeder's mugshot, police & arrest certified court records, jail time, bank receipts, no rent paid, damages to Plaintiff Amrhein's property, theft of personal property, police records as filed, assault charges filed, all bills for damages & itemized thefts;

b) **McKinney Police** Detective & District Attorney's sworn testimony of assault investigation;

c) **Subpoena testimony** of Judge Paul Raleeh in Collin County Justice Court as to court filing, pre trial hearing, evidence examined & all Orders for Darlene Amrhein v. David Schroeder with all Court recommendations;

d) **Subpoena testimony** of David Schroeder's Attorney & court actions in case 002-2663-2017 as filed;

e) **Subpoena testimony** of Collin County Judge Barnett Walker & court actions in case 002-2663-2017, evidence examined & his Court Order;

f) **Certified therapy records** after assault & damages done to Plaintiff Amrhein;

g) **Plaintiff Amrhein's sworn testimony** from June 1, 2014 to present date with description of activities & abuses at home from Sept. 2014 to March 10, 2015 & aftermath with harassments, threats, phone calls & use of fraudulent name;

h) **All conversations as logged** between David Schroeder & Darlene Amrhein;

i) **David Schroeder negligent misrepresentations** made to Plaintiff Amrhein to induces, defraud, set up & attempt to take Plaintiff Amrhein's property;

j) **Exhibits of all evidence** in the Amrhein v. Schroeder lawsuits;

k) **Certified by Dallas marriages**, letters & Dallas divorce of third wife;

l) **Medical conditions of David Schroeder** & all medications with behaviors;

m) **Sworn Testimony by Darlene Amrhein** of all professionals contacted;

n) Subpoena of ex-wives, family & friends for sworn testimony about Schroeder;

o) All jobs held by David Schroeder from June 1, 2014 to the present & salaries;

p) All of above a to p will prove the David Schroeder lawsuits as not properly represented by Wormington Law Firm & all their Defendant Attorneys, causing damages, harms & injuries to Plaintiff Amrhein as the basis of this lawsuit;

VI. Definition of Legal Malpractice

Similar to medical malpractice, legal malpractice occurs when an attorney fails to perform according to the proscribed standards and codes of ethical and professional conduct. Still, not getting the desired (or expected) outcome in your case is not enough to warrant a malpractice claim. Attorneys must have been negligent, in breach of a contract, or otherwise in violation of the American Bar Association's Rules of Professional Conduct (adopted by all state bars except California).

//.

If your lawyer has violated these rules (such as comingling financial accounts or a conflict of interest) or acted negligently in some way, you may file a legal malpractice claim. In order to win your case, you would have to show that a typical (and competent) lawyer would have prevailed in your case.

For legal malpractice claims based on negligence, you need to prove the following four elements:

1. The lawyer owed a duty to provide competent and skillful representation;
2. The lawyer breached the duty by acting carelessly or by making a mistake;
3. The lawyer's breach caused an injury or harm; and
4. The harm caused a financial loss.

Terms to Know

- *Commingling:* Attorney's act of combining funds of his beneficiary, client, employer, or ward with his own funds. Such act is generally considered to be a breach of his fiduciary relationship.
- *Conflict of Interest:* A conflict between competing duties, as in an attorney's representation of clients with adverse interests.
- *Fiduciary:* One often in a position of authority who obligates himself to act on behalf of another (as in managing money or property) and assumes a duty to act in good faith and with care, candor, and loyalty in fulfilling the obligation.
- *Neglect:* A disregard of duty resulting from carelessness, indifference, or willfulness.

In addition to proving the four elements discussed above, you would need to show a clear causation. In other words, it must be clear to the court that you would have prevailed in your case had the attorney abided by the Rules of Professional Conduct.

When you hire an attorney, you deserve loyal, competent and trustworthy representation.

Four elements must be present in order for you to have case for malpractice:

1. **Duty** - The attorney has a duty to us such skill, prudence, and diligence as other members of his profession commonly possess and exercise;
2. **Breach** - A breach of the attorney's duty to you;

3. **Causation** - a proximate causal connection between the negligent conduct and resulting injury;
4. **Damage** - You suffered actual loss or damage as a result of the negligence.

When an attorney represents you, he or she has a duty to represent you with such skill and diligence as a reasonable attorney of similar skill and experience should have. The critical inquiry to determine whether an attorney was negligent is whether that attorney's actions or advise were so legally deficient when it was given that he or she may be found to have failed to use such skill and diligence as lawyers of ordinary skill and capacity commonly possess in the performance of the tasks which they undertake.

The law defines legal malpractice as three areas:

- **Breach of fiduciary duty** - This is the term that means your attorney has failed in their obligation to give you, as the client, the best care possible.
- **Breach of contract** - This is when someone goes against the terms agreed upon in a contract.
- **Negligence** - This occurs when an attorney fails to act in a way that a reasonable attorney would be expected to act and fails to meet expectations which then cause damage.

If the attorney is negligent in providing adequate, competent counsel, you may have a case for malpractice.

Here are some ways an attorney may breech the duty of care owed to a client:

- **Missed deadlines** - The attorney is responsible for ensuring that important case deadlines are met. These deadlines include things like filing documents or for when statutes of limitations run out to file motions or bring your case to trial.
- **Withholding information** - If a settlement was offered in your case, the attorney is obligated to inform you of that offer. If you are not told about the offer, the attorney may be negligent.

Additionally, you must be able to prove that without the attorney's negligence, you would have won the case.

Other cases for Legal Malpractice:

- **Undisclosed conflicts of interest** - Your attorney must disclose any conflicts of interest which could cause them to not represent your interests foremost. These conflicts could include having a relative of the attorney's as opposing counsel. The attorneys loyalty must be to you alone as the client.
-
- **Misrepresentation** - If an attorney tells a client something as a fact, but knows it to be false and this misleads the client, that is misrepresentation.

Other typical examples of legal malpractice include:

- Poorly drafted documents
- Failure to advise clients of their options
- Failure to disclose material information to the client
- Failure to conduct legal research
- Failure to investigate

Missed Statute of Limitations

As professionals, attorneys can and should be held responsible for legal malpractice if they fail to file a suit within the restricted time frame dictated by the statute of limitations. If your case has been mishandled and allowed to languish past the time limitation to take appropriate action, we will be your advocate in a legal malpractice suit against your original attorney by focusing on what we believe would have plausibly occurred had your case been handled in a more timely manner.

Breach of Fiduciary Duty

If you have received poor advice from an estate planning attorney, your family's financial future has been damaged by your lawyer's negligence. We will help you seek justice. Fiduciaries owe a duty of trust which can be breached.

Legal Malpractice Due to Conflict of Interest and Incompetence

If your lawyer had a conflict of interest for which they should have excused themselves, such as a purely personal or business interest in the outcome, this constitutes legal malpractice. You need a new lawyer. Our law firm also handles

legal malpractice cases involving incompetence, including cases of attorneys taking on cases beyond their professional ability or training. Our law firm is thorough and dependable, and our attorneys remain accessible to our clients throughout their case.

- **About Legal Malpractice Litigation**

- Legal malpractice cases (also called lawyers' professional liability or attorney negligence cases) are among the most complex cases filed in courts today. Lawyers' professional liability litigation is complex because it can touch on any area of the law and on any industry involving a lawyer or law firm. Professional liability cases are usually multi-layered because they almost always involve an underlying business transaction or lawsuit (sometimes called the "deal within the case" or the "case within the case"). Not only must a court or a jury decide whether the defendant lawyer acted improperly, but the court or jury must decide whether the lawyer's improper actions caused harm to the plaintiff. That analysis requires the jury or court to decide issues in the underlying transaction or lawsuit in addition to deciding whether or not the defendant lawyer was negligent. Legal malpractice lawsuits often involve allegations of breach of fiduciary, fraud or other malfeasance by lawyers beyond professional negligence. Legal malpractice claims are often part of business litigation that we handle on behalf of our business client.

- **Extrinsic Evidence:** Extrinsic Fraud is commonly associated with Legal Malpractice in that it happens in a means wherein your attorney merely engages in Willful Suppression of critical Material Evidence. With a little help from the opposing counsel and the court it is concealed in Pomp and Circumstance and buried deep in procedure that just seems to not make any sense at the time it is happening. However, now you are researching Legal Malpractice and that means that this situation most likely happened and now your eyes are wide shut. The place to look is in the Extrinsic Evidence and the most significant piece of *Material Evidence* that was subject to *Omission* with *Intention*. If you are successful in proving *Intention*, you will essentially have an easy path to success thereafter. However, that is the great wall of *Discovery* that has ultimately defeated your Cause of Action by merely concealing the Omission and diverting attention to the Cloud of Litigation.
-
- At the time it is happening you are convinced that your premonition cannot be true, until the reality hits you and reality sets in.
-

- Conspiracy is now evident and everyone is in on and you are the "baby lamb with a broken leg" and your attorney is part of the wolf pack and they are dragging you into the lions den.
-
- Your attorney put on a good show and it seemed like they were just fighting injustice on your behalf. However, after the Cloud of Litigation has settled and you reflect on what was happening it just seems that there was *Intention* and you were Deceived and it is evident that there was Conspiracy and what seemed like a series of bad hearings is actually scripted.
-
- **Extrinsic Fraud:** Extrinsic Fraud is a common means that your attorney defeats your Cause of Action by *Intention.*
-
- When you come to the realization that this happens commonly in courts of Equity
-
- However, there is an Equitable Remedy and your *Attorney of Record* has a Fiduciary Duty through your Contract and the co-conspirators also share in that Bill of Particulars that results from the *Breach of Fiduciary Duty*
-
- However, if this is strictly about resolving the Willful Suppression of critical Material Evidence and bringing Extrinsic Evidence into a Facts in Evidence, then the matter is simple as to Declaratory Judgement.
-
- However, the solution may be simple but the Conspiracy will ultimately produce more of the Cloud of Litigation to continue to hide said evidence for as long as they are able before the court will find Extrinsic Fraud and Fraud Upon the Court.
-
- Until then you must not waiver from your position that the Underlying Matter is subject to the Statute of Frauds.
-
- The Willful Suppression of the *Omission* of your most critical *Material Evidence* results with your failure to properly Establish a Cause of Action.
-
- Attempts to Propound *Discovery* will only result in Objections that thwart your ability to admit the Extrinsic Evidence in as a Fact in Evidence.
-

Fraud Upon the Court: Typically Fraud Upon the Court is related to officers of the court that directly commit fraud in their direct pleadings to the court.

-
- **Legal Malpractice:** The Error of Omission is a direct and proximate Cause of Action related to Extrinsic Fraud and Fraud Upon the Court.
-

- The solution to Legal Malpractice by your own *Attorney of Record* may prove difficult.
-
- They are a State Bar Licensed Attorney that is held in high regard by the Trial Court. On the other hand, you are a Pro Se Litigant that is viewed with distant and distrust just based on your inability to play the legal game of the Law and Motion Waltz.
-
- In fact, statistics show that only one percent (1%) of all Pro Se Litigants win against their attorney especially if your attorney was Working in Concert or in Collusion with the opposing side.
-
- You are now going to have to go against your own attorney that you hired and the opposing side that was in Collusion with your attorney.
-
- In addition, now your attorney is suing you for back pay and also Defaming your Character in the Pre-trial Court.
-
- At some point your attorney ends the discovery process through the Law and Motion Waltz.
-
- It becomes evident that there is in *Collusion* with the opposing side and there is *intent* and *Self Dealing* through the Errors of Omission.
-
- **Fraud:** *Fraud* is a specialty related to *Intention* gain an unfair advantage using deceit and material *misrepresentation*.
-
- In order to establish a Cause of Action for Fraud, you will need to meet the Statute of Frauds.
-
- **Breach of Fiduciary Duty:** *Breach of Fiduciary Duty* is directly related to taking advantage of funds that were entrusted to an individual.
-
- In many cases, the attorney is found to be *Self Dealing*.
-

In order to allege a Breach, you must first establish a *Fiduciary* Duty exists that is established via a Will, Contract or *Deed* .

-
- **Venue and Jurisdiction:** Matters concerning Extrinsic Fraud are usually engaged in changing the Venue and Jurisdiction to the location where the attorney is firmly established with the opposing counsel and it is therefore the most lucrative and safe means to engage in *Tortious Interference*, *Embezzlement*, Civil *Theft* and *Deceit*.
-

Upon careful review of the Cloud of Litigation, any and all actions for Monetary *Relief* fall directly on the opposing party and their *Attorney of Record*.

- Your attorney, the opposing attorney are all State Bar Licensed and are accountable for their professional conduct.
-
- However, the ultimate Monetary *Relief* will imputed upon their client, who ultimately benefited from the Extrinsic Fraud and Fraud Upon the Court. The solution is to file a *Declaratory Judgement Without Monetary Relief – FRCP Section 57*. *Declaratory Judgment*

Legal malpractice happens when an attorney handles a case inappropriately due to negligence or with intent to harm and causes damages to a client. To prevail in a legal malpractice lawsuit in most jurisdictions, you will need to prove an attorney-client relationship between you and the lawyer, a breach of the duty to provide skillful and competent representation (negligence), causation, and a financial loss.

The January 30, 2018 Order is demanding Plaintiff remove causes of action necessary in this Legal Malpractice Lawsuit with Wormington Law Firm & all Defendants within, which is Obstruction of Justice & Fraud Upon Court & Prejudicial to Plaintiff Amrhein, by Judge Dan Wilson, who violates federal & Texas Laws on ADA against disabled Plaintiff Amrhein in retaliations to prejudice this case as a bias Judge engaged in "conflict of interest" & retaliation against Plaintiff in support of protecting the corrupt Defendants in this lawsuit & their Attorneys from the Cobb, Martinez, Woodland & Carrie Phaneuf, while engaging in Judicial Misconduct that will be reported;

Plaintiff believes this January 30, 2018 Court Order is invalid due to violations of federal law and Americans With Disabilities Act, & Fraud Upon the Court with intent to "Obstruct Justice."

Plaintiff believes this Judge Dan Wilson has a conflict of interest, bias, prejudicial & retaliatory against Plaintiff & this lawsuit to protect these corrupt Defendant Attorneys & may be a possible bribe for a positive outcome as Plaintiff was bribed by Defendants for $3,000.00, which was refused;

Proving the first element requires you to show that an attorney gave or promised to give you legal advice or assistance, and therefore created an attorney-client

relationship in which you were owed competent and skillful representation.

Usually, this relationship is created by a written contract or agreement, but it also can be implied from an attorney's actions in connection with the client's actions.

In some states, if a client has a reasonable belief that there is an attorney-client relationship based on an attorney's representations, that is enough to find an attorney-client relationship.

The nature of this element could vary depending on the ethics rules of the State Bar in your state, and occasionally attorneys do contest that there was such a relationship.

Second element of attorney negligence is similar to the standard for medical negligence. In performing legal services, an attorney must exercise the care, skill, and diligence that are commonly exercised by other attorneys in similar conditions and circumstances.

However, if a reasonably prudent attorney with the skill and competence level necessary to provide the same legal service would not make the decision made by the attorney, there may have been a breach of duty.

With regard to the third and fourth elements, you must show that if the attorney had not been negligent or otherwise acted wrongfully, you would have been successful in the underlying case.

It can be challenging to prove that the outcome of a legal proceeding would have been different if your attorney had acted differently.

Some common kinds of malpractice include failure to meet a filing or service deadline, failure to sue within the statute of limitations, failure to perform a conflicts check, failure to apply the law correctly to a client's situation, abuse of a client's trust account, such as commingling trust account funds with an attorney's personal funds, and failure to return telephone calls.

In addition to a civil legal malpractice lawsuit, in cases of fraud or theft, the attorney can be reported to the State Bar or criminally prosecuted. The state bar may impose disciplinary sanctions, such as fines or disbarment.

Intentional Torts

Torts are acts committed by one or more individuals or entities ("tortfeasors") that

result in harm to another individual or entity. The harm is often physical injury, but it can also include reputational harm or property damages.

Most torts are caused by negligence or carelessness, but some are intentional. Intentional torts, such as battery or false imprisonment, are those that carry an element of intent. Generally, intentional torts are harder to prove than negligence, since a plaintiff must show that the defendant did something on purpose.

When Is a Tort Intentional?

A tortfeasor's state of mind determines whether a tort is intentional. If, for example, a truck driver is distracted and turns right without looking carefully, hitting a motorcyclist who has the right of way, the resulting truck accident is the result of negligence. The truck driver owed a duty to the motorcyclist and others to use reasonable care while driving, and this duty was breached, resulting in harm. The truck driver in that case has not committed the intentional tort of battery.

There are three types of intent that a plaintiff may be required to show in an intentional tort case: willfulness, knowingly causing harm, or recklessness.

In other words, a plaintiff needs to prove that the defendant meant to hurt him or her, understood the actions would result in the harm, or acted without showing any caution.

In many cases, it is important for a plaintiff to allege both negligent and intentional torts in connection with the same event so that, even if he or she cannot prove the intentional tort, he or she can still recover based on negligence.

Types of Intentional Torts

In addition to battery and false imprisonment, there are many other types of intentional torts, including assault, slander, defamation, misrepresentation, and fraud.

As noted above, harms that demand redress are not only physical harms, such as those arising out of car accidents or a slip and fall, but also reputational harms. For example, defamation involves making false statements that harm reputation, and it is a category of tort that includes both slander and libel.

Although assault, battery, and wrongful death may be intentional torts that are the basis of civil actions, they can also be crimes.

When a person who loses a civil suit is found liable, he or she can be subject to a judgment requiring him or her to pay monetary damages to the prevailing party. This holds true even in a wrongful death case involving intentional conduct by a defendant.

Crimes must be proven beyond a reasonable doubt, which is a high standard. In most states, personal injury cases must be proven by a preponderance of the evidence, which is a much lower standard. The differences in these standards means that someone can be held liable in a civil suit for assault, battery, or wrongful death even though he or she was found innocent in a criminal proceeding.

The Most Common Legal Malpractice Claims by Type of Alleged Error

The following expands on the information in the article "Are You At Risk? The Biggest Malpractice Claims Risks and How to Avoid Them," published in the July/August 2010 issue of *Law Practice* magazine (Volume 36, Number 4). Archived issues of *Law Practice* magazine are available at www.lawpractice.org.

The following table shows the most common legal malpractice claims by type of alleged error for selected claims from both the United States and Canada. The error types are listed from more to less common for claims in the US. The rankings for the Canadian claims are listed in a separate column. The U.S. figures come from the 2004-2007 and 2000-2003 Profile of Legal Malpractice Claims studies prepared by the ABA Standing Committee on Lawyers' Professional Liability. These studies include data from many insurers across many states and represent 42,076 claims. The Canadian figures come from 14,782 claims reported between 2000 and 2007 to the Lawyers' Professional Indemnity Company (LAWPRO), the malpractice carrier for the approximately 21,600 lawyers in private practice in Ontario.

Type of Error	ABA data		U.S.Ranking	LAW PRO data		Canadian Ranking
Fail to Know/Apply Law	4770	11.3%	1	1388	9.4%	4
Planning Error	3737	8.9%	2	316	2.1%	12
Inad Disc/Investigation	3719	8.8%	3	2084	14.1%	2
Fail to File Documents: no deadline	3636	8.6%	4	160	1.1%	19

Fail to Calendar	2825	6.7 %	5	683	4.6 %	8
Fail to Know Deadline	2782	6.6 %	6	918	6.2 %	7
Procrastination	2490	5.9 %	7	653	4.4 %	9
Fail to Obtain Client Consent	2293	5.4 %	8	1799	12.2%	3
Conflict of Interest	2218	5.3 %	9	920	6.2 %	6
Fraud	2113	5.0 %	10	407	2.8 %	11
Fail to Follow Instructions	1832	4.4 %	11	2135	14.4%	1
Fail to React to Calendar	1609	3.8 %	12	289	2.0 %	13
Malicious Prosecution	1593	3.8 %	13	205	1.4 %	16
Error in Record Search	1491	3.5 %	14	267	1.8 %	14
Clerical Error	1226	2.9 %	15	418	2.8 %	10
Improper Withdrawal	1054	2.5 %	16	84	0.6 %	21
Libel or Slander	774	1.8 %	17	239	1.6 %	15
Civil Rights Violation	705	1.7 %	18	68	0.5 %	23

Tax Consequences	664	1.6 %	19	179	1.2 %	17
Error in Math	323	0.8 %	20	27	0.2 %	24
Lost File & Document	222	0.5 %	21	119	0.8 %	20
Poor Communication	not used in ABA study*			1180	8.0 %	5
Work Delegated to Employee	not used in ABA study*			162	1.1 %	18
Work Delegated to Outsider	not used in ABA study*			82	0.6 %	22

IN CONCLUSION & PRAYER

After all legal research on legal malpractice it shows that Judge Dan Wilson, five Defendants & their Attorneys from Cobb, Martinez & Woodland / Attorney Carrie Johnson Phaneuf have conspired & colluded against Plaintiff Amrhein in trying to dismantle the Legal Malpractice Lawsuit in a cover up of all valid issues according to the rules, laws & statutes including codes for Defendants that engage in legal malpractice with is "abuse of discretion" & corruption which will be Appealed & reported to all appropriate authorities for Judges & Attorneys for "Fraud Upon The Court, Federal & Texas Authorities for violations & "Obstruction of Justice" against sworn oath of office & Texas Bar licenses, which fraud is not protected by any immunities & Plaintiff will sue. False Court filings of slander to mislead this Court on Feb. 9. 2018 will also cause a lawsuit for fake documents & security. Plaintiff has no intentions of dismissing this lawsuit & will sue for harassment against all participants that continues to contact Plaintiff knowing of 2 surgeries. Any interference with Plaintiff's doctors, medical personnel, other Courts, court staff, family or any other lawsuits will be a filed lawsuit against all participants for serious damages & for liability of high dollar values, so try me as you have been warned. There is no valid Order of Dismissal, so try that for another lawsuit & no

reason for any security based on a false published order under investigation for impeachment. If you want to interfere with Department of Justice & governmental agencies then just try as your names have been reported & you will be sued. You activities are being documented & reported for slander & interferences.

This Court Record clearly shows the activity during this lawsuit since Oct, 2017 to the present for examination as reported. So how much did you have to pay as bribes to try to throw this lawsuit with the aid of Judge Dan Wilson? The "conflict of interest, bias, prejudice & retaliation is obvious & the goal was to prevent all "legal malpractice" remedies that could not be heard or decided due to missing facts & missing stated claims / causes of action, because you believed that Plaintiff, Pro Se would never notice until it was too late & 5 Defendants could not be charged. **Shameful conspiracy**, cover up, collusion, Obstruction of Justice & Frauds Upon The Court by these officers of the Court & Judge Dan Wilson.

Anthony J. Balistreri's CD video will be very informative with his Attorney as concrete evidence in this Legal Malpractice Lawsuit to prove this Case.

Defendants & Attorneys Settlement Offer is a joke sent for intimidation & totally rejected as fraudulent as these 5 Defendants /Attorneys in this lawsuit ! Time to focus on facts & illegal acts by all Defendants violations against Plaintiffs Amrhein & Balistreri causing serious damages & losses for "Good Cause" Objections.

Plaintiff prays for an un bias trier of fact, who follows the Texas & Federal laws for enforcement, fairness, "due process," and Justice !

Respectfully submitted

Darlene C. Balistreri-Amrhein

* All violated federal + Texas ADA !

Darlene C. Balistreri-Amrhein, Plaintiff &
Anthony J. Balistreri, (Deceased Plaintiff)

2/11/18

24.

VERIFICATION / AFFIDAVIT

CAUSE NO. 005-02654-2017

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned Plaintiff, Darlene C. Balistreri-Amrhein, who swore in her capacity & individually on her sworn oath, deposed and said she prepared and signed Plaintiff's Objections For "Good Cause" Reasons

This information as referenced and stated within is true and correct and of Darlene C. Balistreri-Amrhein's own personal knowledge to best of her ability & documented. This state and or federal filing is for purpose of "due process," fairness, Justice under State and Federal Laws & presented in applicable Court attached as sited for this Court filing.

Darlene C Balistreri Amrhein

Darlene C. Balistreri-Amrhein, Plaintiff, Pro Se

SUBSCRIBED AND SWORN TO ME, BEFORE ME: ON February 12, 2018 to Certify which witness my hand and official seal.

SEAL:

NOTARY PUBLIC STATE OF TEXAS
TREVOR HILZ
My Commission Expires
May 1, 2019

Trevor L. Hilz

Notary Public of Texas (Printed Name)

Trevor L Hilz

Notary Public of Texas (Signature)

Commission Expires May 1, 2019

CAUSES OF ACTION THIS COURT ORDERS TO BE REMOVED TO OBSTRUCT JUSTICE & COMMIT "FRAUD UPON THE COURT"

(Exhibit A)

1) **Texas Rules of Civil Procedure** is not a causes of action to be removed, but laws to be followed as a matter of law & Rule of Law as legislated with due process as required before the loss of property & assets;

2) **United States Constitution ,** Amendments / Bill of Rights are not causes of action to be removed, but enforced as a matter of law & Rule of Law with due process as required before the loss of property & assets promised to all citizens;

3) **Violations of Texas Disciplinary Rules of Professional Conduct** is a

requirement of all Defendants Bar license to Practice in the State of Texas & subject to discipline, suspension & loss of license to practice; - Cause of Action & apart of Legal Malpractice;

4) **Breach of Fiduciary Duty** - Cause of Action & apart of Legal Malpractice;

5) **Breach of Contract** – Cause of Action & Apart of Legal Malpractice;

6) **Fraud** – Various Frauds are apart of Legal Malpractice;

7) **Violations of DTPA** are apart of Legal Malpractice if used against law;

8) **Bad Faith** – Bad Faith is apart of Legal Malpractice as used in this lawsuit;

9) **Negligent Misrepresentation** is apart of the Legal Malpractice in lawsuit;

10) **Conspiracy** is apart of the Legal Malpractice in this lawsuit & 5 Defendants;

11) **Alleged Discriminations** is apart of the Legal Malpractice in lawsuit;

Exhibit A – January 30,2018 Court Order, which is invalid as Notice of Motion To Stay & Continue this lawsuit on inactive docket due to Plaintiff's disability & Federal Laws under the Americans With Disabilities Act – ADA on January 16, 2018 in effect & abuse of discretion by Judge Dan Wilson to deny Plaintiff;

Exhibit A is invalid on Motion To Dismiss by TRCP 91a because no hearing was conducted in 60 days by February 6. 2018 required, Defendants Attorney aware of ADA as filed notice to this court, making this January 30, 2018 invalid in all things as claimed, including any & all attorneys fees with continued harassment & threats more than 24 times by this Court and Defendants Attorneys since January 16,2018;

Exhibit A

CERTIFICATE OF SERVICE

A true and correct copy of Plaintiff's Timely First Amended Pleadings And 15 Notices And Plaintiff Response to January 30, 2018 (Returned) And Plaintiff's Objections For "Good Cause" Reasons was served by Certified Mail through the United States Post Office on or about Feb. 12, 2018 to the following:

Collin County Courthouse — Certified 7017 0530 0000 6416 6044

County Court at Law No. 5

Honorable Dan K. Wilson
Attn: Collin County District Clerk's Office
2100 Bloomdale Rd.
McKinney, TX 75071

Cobb, Martinez, Woodward, PLLC — Certified # 7017 0530 0000 6416 6037

Attorney Carrie Johnson Phaneuf

1700 Pacific Avenue, Suite 3100

Dallas, TX. 75201

CERTIFICATE OF CONFERENCE

There was no conference filed & served because Plaintiff is too sick, in pain & medicated from hospital discharge.

Respectfully submitted,

Darlene Balistreri-Amrhein

Darlene Balistreri-Amrhein, Plaintiff, Pro Se and

Representative for Deceased Anthony J. Balistreri

2/11/18

26.

original

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al, Plaintiffs,

V.

ATTORNEY LENNIE F. BOLLINGER, et al and

WORMINGTON & BOLLINGER LAW FIRM, et al, Defendants,

COUNTY COURT AT LAW NO. FIVE (5) JUDGE DAN WILSON
COLLIN COUNTY, TEXAS

PLAINTIFF'S TIMELY FIRST AMENDED PLEADINGS & 15 NOTICES

FILED
COUNTY COURT AT LAW
2018 FEB 13 PM 3:19
STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
BY: _____ DEPUTY

Darlene C. Balistreri-Amrhein. et al Plaintiffs
112 Winsley Circle
McKinney, TX, 75071
Telephone Unpublished

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Exhibit A.....2 Invalid Court Orders
Exhibit B.....Defendants Attorneys Settlement, Threats, Harassment
Exhibit C.....Proof of 2 Court of Appeals Letters 2017
Exhibit D.....Post Office Tracking
Exhibit E.....Returned Court Filing Feb. 6, 2018
Exhibit F.....Copy Legal Malpractice Attorney Interviews

INDEX OF AUTHORITIES

Doe v Doe Law Firm Settlement: $3 million Transactional Legal Malpractice relating to the sale of plaintiff's business.

Doe Company v. Doe Law Firm Verdict: $45.6 million

Legal malpractice, fraud, and breach of fiduciary duty case involving concealment of conflict of interest in real estate transaction. Confidential settlement reached before punitive damage phase.

Doe Individual v. Doe Law Firm Settlement: $9.6 million

Legal malpractice against attorneys who negligently prepared and tried a special education /brain injury action against a government entity.

Doe City v Doe Law Firm Settlement $8 million

Legal malpractice action involving the failure to adequately prepare transactional documents on behalf of Government Entity.

Doe Individuals v. Doe Law Firm Settlement: $3 million

Legal malpractice action involving violation of statute of limitations on an underlying wrongful termination action.

Doe Individual v. Doe Law Firm Settlement: $2.2 million

Legal malpractice action against attorneys who negligently advised doctor as to his liability and exposure in fraud lawsuit against him and others by shareholders of a corporation.

City of Glendora v. Burke, Williams & Sorensen Settlement: $935,000

Legal malpractice action involving failure of law firm to advise adequately a governmental entity regarding land use issue.

Botez v. Hertzfeld & Rubin Verdict: $900,000

Trial involving legal malpractice and conflict of interest over real estate development in Romania.

Fenmore v. Loeb & Loeb Confidential Settlement

Settlement of a legal malpractice claim that stemmed from the handling of a probate and estate matter.

Cedars Sinai Medical Center v Mitchell, Silberberg & Knupp: Confidential Settlement

Legal Malpractice Action regarding the failure to timely file a patent application relating to an improvement to laser eye surgical procedures.

DOES v. DOE LAW FIRM: Confidential Settlement:

DOES hired DOE LAW FIRM to defend them in litigation involving valuable artwork. DOE LAW FIRM committed malpractice while drafting the settlement agreement. DOE LAW FIRM unsuccessfully tried to blame former clients for the malpractice, sue the clients for unpaid legal fees, and avoid liability on statute of limitations grounds.

Doe City v. Roe City Attorney
$1.5 million
Klein & Wilson represented a City against its former City Attorney for legal malpractice arising out of the City Attorney's failure to identify and resolve a conflict of interest. The conflict of interest sparked negative media attention, a public audit, and a criminal prosecution. Ultimately, the City was forced to reimburse funds spent on a public project. When Klein & Wilson substituted into the case, the former City Attorney refused to offer a penny to resolve the case. After Klein & Wilson evaluated the case and presented the former City Attorney with facts showing it had substantial exposure at trial, Klein & Wilson was successful in resolving the case for ***$1.5 million*** without taking a single deposition.

Does v. Roe Law Firm
$250,000
Klein & Wilson recovered **$250,000** in a legal malpractice case where the attorneys did a poor job preparing an underlying personal injury and civil rights case. Despite serious issues of causation, Klein & Wilson convinced the law firm's insurance carrier a jury would overlook the causation issues because of the attorneys' misconduct.

Doe v. Roe Law Firm
(Settlement)
Klein & Wilson's client hired a law firm to represent her in a divorce case. The attorney did a poor job preparing her case for trial and relied too heavily upon an expert who did not know what she was doing. When the client complained that the expert's report was filled with mathematical mistakes, the lawyer panicked, made an inappropriate physical contact with the client, and forcefully told the client she had to settle. Klein & Wilson's client decided she could not trust the attorney and was also afraid of him because of his physical aggression. She terminated his services and asked the court for a trial continuance, but the court refused to continue the trial. The trial ended in a predictable

disaster. The defense contended the client's wounds were "self-inflicted" and that it was her discharge of the attorney which led to the disastrous trial result. Klein & Wilson was able to achieve a favorable confidential settlement for its client, allowing her to get back on track with her life and not be distracted by further litigation.

Kessler v. Horan
(Plaintiff Verdict)
In this attorney malpractice action, Klein & Wilson represented an investor who purchased real estate in Newport Beach. The attorney who represented Klein & Wilson's client in the transaction botched the transaction so badly, the client's title to the property was unclear, which resulted in several other lawsuits being filed. The attorney denied all liability and the case went to trial. The attorney was represented by one of Orange County's most experienced trial attorneys. Nevertheless, Klein & Wilson prevailed at trial and recovered all the damages it requested.

Sjostrom v. Pepper Hamilton, LLP
(Settlement)
Klein & Wilson's client purchased a business and expected to have a covenant not to compete in the sales agreement, which would have prevented the owners of the assets from competing against him. The client discovered that his lawyers did not properly draft the covenant not to compete. The client sued his former counsel, one of the largest law firms in the county. Klein & Wilson worked cooperatively with opposing counsel to resolve this case satisfactorily for all sides, without a large expenditure of legal fees.

$1,800,000 MEDICAL MALPRACTICE Legal Malpractice, **$5.2 million & $1.5 million** settlement in sexual assault case & verdict assault

$1 million settlement in sexual assault case
$640,000.00 legal malpractice settlement
$1,200,000.00 verdict: nursing home negligence resulting in wrongful death
$ 725,000.00 settlement for legal malpractice

The underline case for Plaintiff Amrhein Lawsuit against David Schroeder for sexual assault, theft, property damages, unpaid rent, etc, was not without value. **The wrongful death, killing & medical malpractice** against Plaintiff Balistreri & known statute of limitations was not without value as his medical files were held by these 5 Defendants in with 2 lawsuits that were "Legal Malpractice" & will be continued with appropriate counsel after the Americans With Disabilities Act / ADA is lifted following recovery & Plaintiff's medical release of 2 back surgeries. Lawsuit for slander, harassment denied ADA will be filed on Cobb, Martinez & Woodland & Collin County Court System, Judge, et al.

iv.

Original

CAUSE NO. 005-02654-2017

DARLENE C. AMRHEIN, et al COUNTY COURT AT LAW

Plaintiffs,

V. NO. FIVE (5) JUDGE WILSON

ATTORNEY LENNIE F. BOLLINGER, AND
WORMINGTON & BOLLINGER LAW FIRM COLLIN COUNTY, TEXAS
Defendants, et al Defendants

PLAINTIFF'S TIMELY FIRST AMENDED PLEADINGS & 15 NOTICES

COMES NOW, Plaintiff Darlene C. Amrhein to file Plaintiff's Timely First Amended Pleadings as plead in this lawsuit with 15 Notices as follows:

1. Plaintiff is in process of hiring Malpractice Attorney & Law Firm in this Case;

2. Plaintiff has filed a "formal complaint" with the Department of Justice in Washington, D.C. with documents of proof on violations of ADA federal laws;

3. Plaintiff has filed a "formal complaint" with the Collin County ADA Compliance Authorities for violations of federal ADA laws per United States Congress, which is has no immunities or privilege on this ADA federal law;

4. Plaintiff filed a Motion To Recuse Judge Dan Wilson for violations of ADA law & discrimination against disabled Plaintiff as filed on January 16, 2018 as required Stay & denied by "abuse of discretion," is enforceable & Appealable;

5. Plaintiff's denied ADA law would make this January 30, 2018 Order invalid per denial required federal law to stay this lawsuit as of January 16, 2018 as filed;

6. Plaintiff filed Court Objections as of February 3, 2018 as returned in error & brought to attention of Collin County Court Clerk supervisor for investigation;

7. On February 8, 2018 at about 3:30 PM Plaintiff filed a Motion To Recuse Judge Dan Wilson through the United States Post Office, as considered court filed;

8. Plaintiff received threatening settlement offers by email & certified U.S. Post Office dated February 7, 2018 from attorneys at Cobb, Martinez, Woodland & as reported to Department of Justice, Washington, D.C as their continued harassment;

9. Attorneys at Cobb, Martinez, Woodland by Attorney Carrie Phaneuf continue to harass Plaintiff on Feb. 9, 2018, attempts to mislead as officers by Fraud Upon Court with documents currently in 2017 Appeals in U.S. Circuit Court & as 2017 reported to U.S. Department of Justice, Washington, D.C. to falsely obtain security against in forma Plaintiff, because they do not want to focus on illegal acts & misconduct of their clients / Defendants in this lawsuit; (See Attached Exhibit);

10. **<u>Questions to Defendants & Attorneys</u>** – When was any hearing as required by CPRC, chapter 11, who were testifying witnesses as there was none, because anything less is slander, reversible error, abuse of discretion, Fraud Upon Court, against U.S. Federal Courts, Washington Federal Authorities, U.S. House & Senate Judiciary Committees & under FBI investigation to be determined sometime in 2018 or 2019, so their court filed documents are fraudulent, untrue on 2/9/2018 as

Judge is under Motion To Recuse in this pending lawsuit; (TRCP 18, 18a & 18b.)

11. Plaintiff did not follow this "invalid January 30, 2018 Order as stated," because many "removed stated claims" by this Court referred to Plaintiffs' Legal Malpractice elements to survive on all plead claims as required by rules, laws, statutes & less is manipulation of this Court Record to be examined on Appeal;

12. Plaintiff has not removed (Deceased) Plaintiff Anthony J. Balistreri from this lawsuit, because he is represented by 2 counsels & himself as stated below for violated "statute of limitations," which is his "automatic legal malpractice claim" for relief sought based on material facts & **Plaintiff Amrhein is witness only** as 10 year caregiver & court appointed Collin County Guardian from 2006 to 2013;

13. Plaintiff is in process to hire counsel & to Amend these Pleadings as required;

14. Plaintiff plans to Appeal all decisions, discriminations, violated ADA, Court Orders, "abuses of discretion," Obstruction of Justice & Fraud Upon the Court against all participants in lawsuit for reversal required by Texas & Federal Laws;

15. Plaintiff believes it is time to focus on Defendants' illegal acts that are basis of this lawsuit as plead in this Court filed document, violations of ADA & Motion to Recuse Judge Dan Wilson for "good cause" reasons filed Feb. 8, 2018 to not act;

I. STATED CLAIMS, CAUSES OF ACTION, MATERIAL FACTS, LEGAL THEORIES & RELIEF SOUGHT IN LAWSUIT TIMELY

Plaintiff files following Stated Claims, Causes of Action, Material Facts, Legal

Theories & Relief Sought against Defendants/Attorneys & Wormington Law Firm, et al & their associated legal malpractice insurance carriers as follows:

1) **Stated Claims - Existance of Attorney Client Relationship**

Material Facts – Defendants did not represent Plaintiff's interest, did not disclose conflict of interest with David Schroeder, refused to file assault charge in lawsuit, which is torts & crimes. Defendants through actions showed to represent David Schroeder's interest & represented him with the Court to prevent litigation in wrong Court for wrong amount & allowing him to keep Plaintiff's property. Defendant Bollinger disclosed Plaintiff's "confidential information" with Mr. Schroeder without Plaintiff's permission & known by his responses as disgusted with Defendant David Schroeder in the Collin County Justice Court lawsuit;

Legal Theories - When you hire an attorney, you deserve loyal, competent and trustworthy representation. The basic attorney-client privilege protects client communications with the attorney. It also extends to responsive communications from the lawyer to the client. Communication need not be so overt as an oral or written action. On the contrary, slightest action or inaction, such as an affirmative nod or complete silence, may constitute a communication, which was violated.

Undisclosed conflicts of interest - Your attorney must disclose any "conflicts of Interest," which could cause them to not represent your interests foremost. The Attorneys' loyalty must be to you alone as the client, which was violated here by these Wormington Law Firm 5 Defendants that is basis of this lawsuit;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

2) Stated Claims – Legal Malpractice Against All 5 Defendants

Material Facts – Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge crime, no options given, refused mediation, failed to disclose material fact on theft & admission of Plaintiff's property known, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements, empathy for Defendant Schroeder & protected his interests, missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court suit refiled, late withdrawal, withheld some of Plaintiff's file, caused dismissal of lawsuit, "conflict of interest," incompetence, lack of training, not thorough & not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorneys' actions or advise so legally deficient, failed to use skill & diligence as lawyers of ordinary skill & capacity commonly possess in performance of tasks as these 5 Defendants undertook, withheld material information, settlement offer, breached duty, their negligence, threats, causing Plaintiffs time, financial & property losses & damages as they refused to correct Plaintiff's own mailing address as 112, not 100 as stated by Defendant Schroeder as only 1 of many mistakes & "conflicts of interest" to sue

Legal Theories as stated below:

1. The lawyer owed a duty to provide competent and skillful representation;
2. The lawyer breached the duty by acting carelessly or by making a mistake;
3. The lawyer's breach caused an injury or harm; and
4. The harm caused a financial loss

Other typical examples of legal malpractice include:

- Poorly drafted documents
- Failure to advise clients of their options
- Failure to disclose material information to the client
- Failure to conduct legal research
- Failure to investigate

Missed Statute of Limitations

As professionals, attorneys can and should be held responsible for legal malpractice if they fail to file a suit within the restricted time frame dictated by the statute of limitations. If your case has been mishandled and allowed to languish past the time limitation to take appropriate action, we will be your advocate in a legal malpractice suit against your original attorney by focusing on what we believe would have plausibly occurred had your case been handled in a more timely manner.

Legal Malpractice Due to Conflict of Interest and Incompetence

If your lawyer had a conflict of interest for which they should have excused themselves, such as a purely personal or business interest in the outcome, this constitutes legal malpractice. You need a new lawyer. Our law firm also handles legal malpractice cases involving incompetence, including cases of attorneys taking on cases beyond their professional ability or training. Our law firm is thorough and dependable, and our attorneys remain accessible to our clients throughout their case.

Hiring an attorney, you deserve loyal, competent & trustworthy representation. The critical inquiry to determine whether an attorney was negligent is whether that attorney's actions or advise were so legally deficient when it was given that he or she may be found to have failed to use such skill & diligence as lawyers of ordinary skill & capacity commonly possess in performance of tasks undertaken.

Withholding information - If a settlement was offered in your case, the attorney

6.

is obligated to inform you of that offer. If you are not told about the offer, the attorney may be negligent. Additionally, you must be able to prove that without the attorney's negligence, you would have won the case. Plaintiff will by evidence.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages & justly entitled by laws;

3) Stated Claims - Fail to Know/Apply Law - Defendants were aware of legal principles involved, or where attorneys did research but failed to ascertain the appropriate principles. It applies in instances of erroneous reasoning from known principles. This applies where lawyer(s) simply fails to see legal implications of known facts or failed to apply all facts as required in Justice Court lawsuit;

Material Facts – Assault is a crime hidden & refused by Defendants, only plead conversion of property, not theft, property damages, frauds, intent, negligent misrepresentations, con man as repeat offender, but protected by my Attorneys as Mr. Schroeder claimed he has connections, bribes, retaliates at all cost & approval of good old boy assault is not use of laws by Defendants moral blame of Plaintiff ;

Legal Theories –One most common types of legal malpractice is attorney's failure to apply the law to the client's case. An attorney must competently represent his or her client and to do so, must conduct the necessary (and reasonable) amount of legal research for the client's case. Attorneys have access to a multitude of resources to use when it comes time to investigate and perform necessary research pertinent to the client's case. These resources range from various online research databases to

local law libraries. There is rarely a shortage of information when it comes to legal issues, and it is important for an attorney to fully research the law to be certain that he understands how it applies to the particular facts of client's case. Assault of person, theft of property & refused rent, vandalism is not just Schroeder conversion.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

4) Stated Claims – Various Frauds - Cause of action is fraudulent acts of these attorneys, whether covered by malpractice insurance or not.

Material Facts – Fraud is apart of legal malpractice as Defendants willfully suppress critical material evidence in Schroeder lawsuit, along with little work, no accuracy, no communication for months, delayed update on court Orders, wrong court, wrong amount, refused jury trial, refused correction of errors, refused mediation, incompetence , lack of basic experience, induce, threats, make false statements as relied upon to act upon, causing harms, injuries & losses;

Legal Theories- Extrinsic Fraud is commonly associated with Legal Malpractice in that it happens in a means wherein your attorney merely engages in Willful Suppression of critical "Material Evidence." With a little help from opposing counsel and court it is concealed in Pomp and Circumstance and buried deep in procedure that just seems to not make any sense at time it is happening. *Fraud* is a specialty related to intention to gain an unfair advantage using deceit & material *misrepresentation* as cause of action.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

5) **Stated Claims - Conflict of Interest** - It applies whether the lawyer knew or did not know of the "conflict of interest".

Material Facts – Defendant Bollinger was representing Defendant Schroeder, protecting his interest, trying to get him off & wanted Plaintiff to settle for $200 on a $20, 208.00 liability lawsuit as he rigged this case, then withdrew to benefit of Defendant David Schroeder, as con man, while my attorney blamed Plaintiff, & Bollinger falsely claimed Schroeder never assaulted Plaintiff, when he was not even present, shows a "conflict of interest" against Plaintiff by corrupt, bribed, why he stopped working on lawsuit & would not communicate with Plaintiff;

Legal Theories - *Conflict of Interest:* A conflict between competing duties, as in an attorney's representation of clients with adverse interests. When you hire an attorney, you deserve loyal, competent and trustworthy representation;

Undisclosed conflicts of interest - Your attorney must disclose any "conflicts of Interest," which could cause them to not represent your interests foremost. The attorneys' loyalty must be to you alone as the client, not Defendant Schroeder.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

6) **Stated Claims - Breach of Contract by Defendants**

Material Facts – Defendants did not provide a written contract, but by actions, court filings & signed pleadings was implied & expressed contract representation to

establish legal client-attorneys relationship of Plaintiff in the JP Schroeder lawsuit;

Legal Theories - Breach of contract - This is when someone goes against the terms agreed upon in a contract like competent representation of Plaintiff;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages, justly entitled by laws;

7) Stated Claims - Provide Care, Competent and Skillful Representation;

Material Facts - Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge, crimes, no options given, refused mediation, failed to disclose material fact of admission to Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder, protected his interests on missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough & not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorneys' actions or advise so legally deficient given, failed to use such skill & diligence as lawyers of ordinary skill & capacity commonly possess in performance of tasks these 5 Defendants undertook, withheld material information & settlement offer, breached duty, negligence, threats, then claimed ridiculous settlement offer & no material information, lack of due diligence, causing Plaintiff's time, financial & property losses is not care, competence, skillful representation with loyalty to Plaintiff sues;

Legal Theories - When you hire an attorney, you deserve loyal, competent and trustworthy representation, not a lazy attorney, false statements, threats, errors, etc.

See legal Malpractice point 2) as it applies to these 5 Defendants in this lawsuit;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

8) Stated Claims - Breach of Fiduciary Duty by Defendants

Material Facts – Defendants breached their duty owed to Plaintiff in the Schroeder lawsuit, was negligent (See Malpractice 2), made mistakes, did not do what was promised to do, caused Plaintiff damages by their breaches & behavior resulting in Plaintiff's financial losses of rent, property damages, theft of property & personal injury sexual assault, plus medical bills, loss of time & $20,208.00, because of 4 Defendant Attorneys, who claim they do not speak about lawsuits as assets within the Defendant Wormington Law Firm is cover up, conspiracy, collusion & false;

If you have received poor advice from an attorney, your family's financial future has been damaged by your lawyer's negligence. Fiduciaries owe a duty of trust which can be breached.

- **breach- the attorney breached their duty towards you by being negligent, made a mistake or did not do what they were contracted to do;**
- **causation- this behavior by the attorney caused you damages; and**
- **damages- the costs suffered resulted in a financial loss to you;**

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages, justly entitled by laws;

9) Stated Claims - Breach of Duty Owed to Plaintiff by all Attorneys

Material Facts -Incompetent, untrustworthy, cover up, conspiracy, age & disability discrimination, bias, prejudice, retaliation is obvious by actions & behavior of

Defendants against Plaintiff's lawsuit, financial losses & sexual assault as now sues;

Legal Theories – Breached Duty Owed To Plaintiff By Defendants, Not Received:

- **Give you guidance regarding your legal circumstance never done;**
- **Keep you up to date about your case, never done for months;**
- **Tell you what he or she thinks will transpire in your case, not done;**
- **Allow you to make the vital judgements concerning your case, not done;**
- **Give you an assessment about what your case ought to cost, not done;**
- **Help you in any cost-benefit evaluation that you may need, not done;**
- **Keep in communication with you, not done for months;**
- **Inform you of any changes, delays or setbacks, not done;**
- **Give you the information you need to make educated decisions, not done; and**
- **Prepare you for your case, including disposition and trail preparation, never.**

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

10) Stated Claims - Proximate Cause by Breaches of Duty by All Defendants

Material Facts -Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge, crimes, no options given, refused mediation, failed to disclose material fact to admission of Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder as protected his interests & missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough & not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorneys' actions or

advise, so legally deficient, failed to use such skill & diligence as lawyers of ordinary skill & capacity commonly possess in performance of tasks Defendants undertook, withheld material information, settlement offer, breached duty, negligence, threats, withheld ridiculous settlement offer & material information, lack of due diligence, causing Plaintiff's time, financial & property losses, is not care, competence, skillful representation with loyalty to Plaintiff Amrhein as sues;

Legal Theories - When a person is injured due to another person's or entity's negligence, he or she can recover economic and noneconomic damages that flow from the negligence. Among the elements that the plaintiff suing for negligence will have to prove is that the defendant's violation of a duty was the actual and proximate cause of his or her injuries. He or she will also have to prove duty, breach of duty, and damages. Actual cause, also known as "cause in fact," is straightforward. follow the "but for" rule to determine if an event is the proximate cause. This rule considers whether the injury would not have happened, but for the defendant's negligent action or omission. When there is a finding that an injury would not have happened, but for a defendant's action, it establishes the element of proximate cause. Substantial factor in causing the injury. In jurisdictions that follow substantial factor test, a substantial factor is one that contributes materially to occurrence of an injury. An action contributes materially when its causative effects are in operation until the moment of injury;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages, justly entitled by laws;

11) Stated Claims – Negligence By These 5 Defendants Against Plaintiff

Material Facts - Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge, crimes, no options

given, refused mediation, failed to disclose material fact to admission of Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder as protected his interests & missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough & not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorneys' actions or advise, so legally deficient, failed to use such skill & diligence as lawyers of ordinary skill & capacity commonly possess in performance of tasks Defendants undertook, withheld material information, settlement offer, breached duty, negligence, threats, withheld ridiculous settlement offer & material information, lack of due diligence, causing Plaintiff's time, financial & property losses is not care, competence, skillful representation with loyalty to Plaintiff Amrhein as sues;

Legal Theories of Negligence - This occurs when an attorney fails to act in a way that a reasonable attorney would be expected to act & fails to meet expectations which then cause damage. If attorneys are negligent in providing adequate, competent counsels, you have a case for malpractice. Here are some ways an attorney may breach the duty of care owed to client Plaintiff by 5 Defendants;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

12) Stated Claims – Level of Gross Negligence Against Plaintiff Amrhein

Material Facts - Wrong jurisdiction, wrong court, wrong amount of liability,

wrong home address, wrong pleadings, refused assault charge crime, no options given, refused mediation, failed to disclose material fact of admission of Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder & protected his interests & missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough & not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorney's actions or advise, so legally deficient, failed to use such skill & diligence as lawyers of ordinary skill and capacity commonly possess in performance of tasks Defendants undertook, withheld material information, settlement offer, breached duty, negligence, threats, withheld ridiculous settlement offer & material information, lack of due diligence, causing Plaintiff's time, financial & property losses is not care, competence, skillful representation with loyalty to Plaintiff Amrhein as sues;

LegalTheoriesGross negligence is a conscious voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with ordinary**Negligence**, which is a mere failure to exercise reasonable care. Ordinary negligence & gross negligence differ in degree of inattention while both differ from willful and wanton conduct;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

13) Stated Claims - Willful Wanton Negligence Against Plaintiff Amrhein

Material Facts - Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge crime, no options given, refused mediation, failed to disclose material fact of admission of Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder & protected his interests & missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough, not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorneys' actions or advise, so legally deficient given, failed to use such skill & diligence as lawyers of ordinary skill & capacity commonly possess in performance of tasks Defendants undertook, withheld material information, settlement offer, breached duty, negligence, threats, withheld ridiculous settlement offer & material information, lack of due diligence, causing Plaintiff's time, financial & property losses is not care, competence, skillful representation with loyalty to Plaintiff Amrhein to sue;
LegalTheoryWillful and wanton conduct, which is conduct that is reasonably cons idered to causeinjury. This distinction is important, since contributory negligence- a lack of care by defendant's conduct to cause plaintiff's injury completely, not a defense to willful and wanton conduct, but a defense to gross negligence a defense

to willful & wantonconduct but is defense to gross negligence. Finding of willful & wanton misconduct usually supports recovery of **Punitive Damages**,

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

14) Stated Claims – Fraudulent Misrepresentations Against Plaintiff

Material Facts - Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge crime, no options given, refused mediation, failed to disclose material fact of admission of Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder & protected his interests & missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough & not dependable. Plaintiff deserved loyal, competent and trustworthy representation, not negligent attorneys' actions or advise so legally deficient given, failed to use such skill & diligence as lawyers of ordinary skill and capacity commonly possess in performance of tasks Defendants undertook, withheld material information, settlement offer, breached duty, negligence, threats, withheld ridiculous settlement offer & material information, lack of due diligence, causing Plaintiff's time, financial & property losses is not care, competence, skillful representation with loyalty to Plaintiff Amrhein as sues;

Legal Theories Under contract law, a plaintiff can recover compensatory damages against a defendant when a court finds that the defendant has committed

fraudulent misrepresentation. Courts will typically find that a defendant has committed fraudulent misrepresentation when six factors have been met:

1. a representation was made
2. the representation was false
3. that when made, the defendant knew that the representation was false or that the defendant made the statement recklessly without knowledge of its truth
4. that the fraudulent misrepresentation was made with the intention that the plaintiff rely on it
5. that the plaintiff did rely on the fraudulent misrepresentation
6. that the plaintiff suffered harm as a result of the fraudulent misrepresentation

Recovery "Today, the most common measure of compensatory damages for the tort of fraudulent misrepresentation is benefit-of-the-bargain damages—the same as expectation interest compensatory damages for breach of contract. In the fraudulent misrepresentation context, the benefit-of-the bargain measure of damages allows the plaintiff to recover the difference in value of the property as represented by the defendant and the value of the property the plaintiff ultimately received. Under this measure, the plaintiff 'will have no loss' and 'will achieve any economic gains he would have had if the representations had been correct.'"

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

15) Stated Claims - Negligent Misrepresentations Against Plaintiff Amrhein

Material Facts - Wrong jurisdiction, wrong court, wrong amount of liability, wrong home address, wrong pleadings, refused assault charge crime, no options given, refused mediation, failed to disclose material fact of admission of Plaintiff's property, refused communications for months, failed to disclose & conduct legal research, refused Plaintiff's instructions, refused jury trial, refused to investigate, false statements made, empathy for Defendant Schroeder & protected his interests & missed court dates, while holding Plaintiff to a different standard, no timely disclosure of Court Orders, no proper court refiled, late withdrawal, withheld some of Plaintiff's file, false statements, caused dismissal of lawsuit, conflict of interest, incompetence, lack of training, not thorough, not dependable. Plaintiff deserved

loyal, competent and trustworthy representation, not negligent attorney's actions or advise so legally deficient given, failed to use such skill and diligence as lawyers of ordinary skill and capacity commonly possess in performance of tasks which Defendants undertook, withheld material information, settlement offer, breached duty, negligence, threats, withheld ridiculous settlement offer & material information, lack of due diligence, causing Plaintiff's time, financial & property losses is not care, competence, skillful representation with loyalty to Plaintiff sues;

Legal Theories Negligence" is a term frequently used in tort law. It means that someone violates a legal duty of care they owed another, even if there was no contractual relationship between them. If you drive a car, for instance, you have a duty of care to the other people on the road to operate your vehicle safely.

Negligent misrepresentation occurs when someone recklessly makes a false statement, without a reasonable belief that it is true, for the purpose of inducing you to enter into a business transaction. The Texas Supreme Court has outlined the four elements of negligent misrepresentation as follows:

1. The defendant makes a representation "in the course of his business" or in pursuit of a transaction where he has a personal financial interest;
2. The defendant supplies "false information" to "guide" others in their own business;
3. The defendant failed to "exercise reasonable care" in gathering or disseminating the false information; and
4. The plaintiff suffered a financial loss due to his or her "justifiable reliance" on the defendant's representations;

- The false statement must refer to a past or existing fact. Personal opinions and predictions about the future are not grounds for negligent misrepresentation.
- A false statement is negligent where the speaker has no reasonable grounds for

- believing it is true. A mistake or accidental omission does not count. But unlike fraud, which requires knowing a statement is false, negligent misrepresentation may occur even if the speaker did not know for sure the statement was false.
- However, the false statement must be made with the intent of convincing the plaintiff to do something.

If you can prove that you were the victim of negligent misrepresentation, you can ask the court to compensate your losses.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

16) Stated Claims - Breach of Trust, Intent, Bad Faith & or Malice

Material Facts – Defendants together & separately violated their duties under Wormington Law Firm making them all liable, untrustworthy as breached duties, intent & bad faith to cause Plaintiff & Justice Court losses that was foresee able as attorneys for over I year, denied promises, broke confidentiality, acted in bad faith & malice then Attorney Bollinger showed the Conflict of interest with Schroeder as supported & discussed my personal information, degrading Plaintiff's morals comparing it to a con man with pattern & practice was disgusting;

Legal Theories of Intent, Bad Faith, Malice Against Plaintiff Amrhein

1) any act which is in violation of the duties or a trustee or of the terms of a trust. Such a breach need not be intentional or with malice. but can be due to negligence

2) breaking a promise or confidence.

Intent - mental desire and will to act in a particular way, including wishing not to participate. Intent is a crucial element in determining if certain acts were criminal.

Bad Faith-The intentional refusal to fulfill a legal or contractual obligation,

misleading another, or entering into an agreement without intending to or having the means to complete it. Most contracts come with an implied promise to act in good faith is not what Plaintiff received in JP case & now in this current lawsuit.

Malice - Malice in law is the intent, without justification excuse or reason, to commit a wrongful act that will result in harm to another. Malice means the wrongful intention and includes all types of intent that law deems to be wrongful. Legally speaking any act done with a wrong intention is done maliciously. An example of a malicious act would be committing the tort of slander. If Attorney Bollinger did not want to do the work, then why did he continue for 1 year & not turn it over to one of his associates with knowledge of this lawsuit as discussed firm asset or they got they pay as Mr. Schroeder bragged about bribery to save because he has friends in high places as used before;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

17) **Stated Claims - Procrastination in Performance of Services or Lack of Follow-Up :** This category applies where the delay in dealing with a client's matter by a lawyer causes a loss even though there may not have been a formal lapse of a time limitation, or the intervention of another interest adverse to that of the client, such as the loss of a sale of business, disappearance of evidence, or loss of witnesses which occurred as a result of the lawyer's delay. Lack of follow-up is also covered under this category. This includes the instances where the attorney has initiated some type of action, but has not followed up to make sure

the necessary action is taken. (No follow up by Defendants in JP Case.)

Material Facts – Plaintiff had to contact Attorney Bollinger 3 times just to get information on a judges signed Order before surgery. Plaintiff offered Attorney Bollinger specific information to aid at trial & list of witnesses & he refused it all. Plaintiff scheduled cheap mediation & he claimed he & Schroeder were not available no matter the varied dates. Plaintiff offered to bring all organized exhibits & evidence to his office & was told by Attorney Bollinger it was not necessary, when he could not correct my address for almost one year. When Attorney Bollinger threatened me at Christmas to take $200.00 on a $20, 208.00 liability lawsuit or he would quit as attorney & claimed he would not add the sexual assault, property damages as proven with pictures, repair bills & used his moral standard excuse like I was to blame for sexual assault because I was a woman was absolutely disgusting, degrading & a male, who patronizes, disparages, or otherwise denigrates females in the belief that they are inferior to males and thus deserving of less then equal treatment or benefit as he supported Mr. Schroeder who was not at this meeting & had conversations about my confidential business as this attorney was reminded I did not give my permission for those activities. Sounds crazy to take any word & denial from an ex con, who swindles women.

1. **Legal Theories -** It becomes evident that there is in *Collusion* with the opposing side and there is *intent* and *Self Dealing* through the Errors of Omission;
2. **Fraud:** *Fraud* is a specialty related to *Intention* gain an unfair advantage using deceit and material *misrepresentation*, which all amounts to the making of a legal malpractice;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

18) Stated Claims - Fail to Follow Instructions the attorney has been given

instructions to follow by the client, but fails to follow these instructions either intentionally or unintentionally;

Material Facts – Plaintiff asked for correction of errors on pleadings & denied. Plaintiff asked for updates on lawsuit & ignored for months after messages & emails. Plaintiff asked to add an indispensable party & refused. Plaintiff asked to have examination of all certified evidence & exhibits & refused. Plaintiff asked for a jury trial to be scheduled & refused. Plaintiff asked that Attorney Bollinger, et al Amend the pleading to include all losses & refused. Plaintiff asked for various dates on reasonable mediation & was refused as his interest & excuses were on behalf of Mr. Schroeder, "conflict of interest" not disclosed but obvious by acts;

Legal Theories - Unfortunately, some attorneys can destroy that relationship by committing malpractice. Legal malpractice occurs when an attorney owes a duty to a client, breaches that duty, and the client is harmed as a result. Legal malpractice can in some cases be the result of simple negligence, and in other cases it can be intentional. Defendants went out of their way to destroy Plaintiff & the JP lawsuit & now is doing the harassment & ADA violations to injure my health to let them win after all illegal acts is disgusting & will continue & Appeal under the ADA & Laws.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

19) Stated Claims - Fail to Obtain Client Consent client asserts that, if client had been fully informed by the lawyer of various alternatives or the risks involved, a different course of action would have been selected. It would also apply where

the lawyer should have communicated with client and obtained consent to proceed but did not by omissions.

Material Facts -No matter how many times Plaintiff called Cathy, Bollinger, the others at Wormington Law Firm I got no response for months & if I went to office I got nothing but excuses & we will tell them you came by. Plaintiff took them candy to get cooperation & still few words, busy, no time, more insults or refusals;

Legal Theories - The *2000-2003 Profile of Legal Malpractice Claims* published by the ABA Standing Committee on Lawyers' Professional Liability indicates that 5.75 percent of the claims in their sample cited an alleged failure to obtain client consent or inform the client.

Failing to properly communicate with clients will not only land a lawyer in malpractice trouble, it is also an ethical violation. ABA Model Rule 1.4 Communication states that a lawyer "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" and shall

1. promptly inform the client of any decision or circumstance with respect to the client's informed consent, as defined in Rule 1.0(e) . . . ;
2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and
5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

As stated above, a frequently cited error leading to malpractice claims and ethical complaints is a failure to provide the client with sufficient information. Rule 1.4 makes it clear that a lawyer has a duty to keep clients reasonably informed about the status of their matter, and that a lawyer must comply promptly with requests for information and clearly explain matters to the client so that the client can make informed decisions about his or her case.

In some situations, it is clear how and what to properly communicate with the client. For example, offers of settlement must be discussed thoroughly and promptly. Other situations are not quite as clear. A lawyer cannot always be expected to describe in detail trial strategy or settlement negotiations, but general strategy and prospects of success should be explained to the client.

Keeping the client well informed means communicating with the client whenever there is activity on the client's case. It also means contacting the client regularly when the case is inactive, if only to let the client know the case is still being attended to by the lawyer.

Attorneys should communicate with their clients in at least the following ways:

- Copy all letters to the client. By sending clients copies of all correspondence that pertains to their case, clients can be satisfied that their lawyer is attending to their case. This procedure also eliminates possible future questions as to whether or not the client was informed of crucial case activity.
- Contact the client at least once every 30 days. If you cannot make the contact, staff should be trained to do so. If a telephone call cannot be made, use e-mail or regular mail. Make certain telephone calls are well documented in the file. If you do not have time for this procedure and do not have staff to make the contacts, it is a sign you have too many cases, and the risk of a malpractice claim or ethical complaint greatly increases.
- Return all telephone calls and respond to all e-mail from the client. A simple breakdown in communications as the result of a lost or forgotten e-mail or an unreturned telephone call can be the beginning of irreparable loss of client trust. Keep all telephone call slips and all e-mails in the client file. This documentation will support your recollection of the communication and show that you properly provided legal advice.
- Take detailed notes of all communications with the client. Nothing is more valuable to the defense of a legal malpractice action or an ethical complaint than the file notes that describe all communication with the client.

It is important to remember that clients must be treated the way *they* want to be treated. Do not expect the client to learn "legalese." Instead, the lawyer must learn "client speak." Ensure during your communications that clients understand exactly what you are communicating to them. Often, clients will acknowledge remarks with a nod, even though they haven't the slightest idea what you are saying. If you have any doubt whether the client understands your advice, ask.

Pleasing every client is most likely not possible. But by following the above recommendations, the risks of becoming the subject of a malpractice claim or ethical complaint diminish significantly. Maintaining strong professional communication skills is an integral part of being a successful lawyer.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

20) Stated Claims - Fail to File Documents – These lawyers failed to release files, failed to communicate timely, failed to correct errors filed, & failed to file all stated claims & causes of action in 2 lawsuits;

Material Facts -No accurate pleadings, no accurate address, no accurate stated claims, no examination of evidence for trial, no jury trial, no explanations in JP.

Legal Theories May want to sue your attorney for malpractice if the attorney made significant errors while representing you, sent you a bad check, failed to contact you or settled your case without your permission. Lawyers are bound by the standards of the bar association in the state where they are licensed. If your attorney did not adhere to these standards, you may have a malpractice case.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws

21) Stated Claim - Fail to Calendar & React –Defendants were aware of existence of a time deadline and what it was, but did not initiate any kind of calendar entry reminder to himself or others in the office.

Material Facts -Defendants violate their professional Code of Conduct & Ethics, which this court wanted removed & eliminated as part of a Malpractice claim, so the Jan. 30, 2018 was to manipulate this court record to devalue this lawsuit & allow the Defendants to walk free for illegal acts, which is a "conflict of interest."

The only fracture in this case is all Defendants law licenses made of their own bad choices to commit illegal acts against Plaintiff as now sues;

Legal Theories - The American Bar Association (ABA), in its 2010 Law Practice publication titled "The Most Common Legal Malpractice Claims"1 set out the types of legal errors that are serious enough to be considered malpractice. The most common errors are failing to know and apply the law, planning errors, inadequate discovery or investigation, failing to file documents (ones with no deadlines), failure to calendar, failure to know deadlines, procrastination, failure to obtain client consent, conflict of interest, fraud, failure to follow instructions, failing to react to a calendar, malicious prosecution, error in record search, clerical error, improper withdrawal, libel or slander, civil rights violations, among others.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

22) **Stated Claims - Planning Error** to a contested proceeding where the lawyer has an adequate knowledge of the facts and legal principles and makes an error in judgement as to how Plaintiff's matter should be handled. The cases of wrong decisions where the lawyer knows facts and law. These are usually strategy and judgement errors or if the alleged error occurs because of a lack of knowledge of facts which should have been discovered by the attorney, or clear legal principles which the attorney should have known;

Material Facts What planning did Defendants do to error? The most basic of duties was not performed correctly with 4 Defendants at Wormington, but not one

knows basic principles & duties of first year lawyer shows, money not clients was their only concern. When Defendant Bollinger thought he could bribe me for silence & removal of this lawsuit it never occurred to him that I was damaged for $20,208.00 as this so called inferior female. Defendants true colors show by their illegals acts & false statement & now they want the Judge to bail them out by remove most charges to even destroy the Legal Malpractice Claim by dirty tricks;

Legal Theories - Along with failure to apply the law, inadequate fact discovery and missed deadlines, poor choices in case planning and/or strategy (strategy error) can also lead to legal malpractice. For example, if the attorney is practicing an area of the law that is outside of his or her area of practice or comfort (a real estate attorney practicing criminal law or vice versa), the use of proper strategy for a given matter could be severely jeopardized. But even the most experienced lawyers practicing in their given area of practice can make critical planning and strategy errors. Lawyers oftentimes have a wide range of necessary strategy and planning required for a given matter.

Negligent choices in in setting forth the necessary and proper claims and/or defenses can be tied directly to a lawyer's planning and strategy and can lead to malpractice. Additionally, negligent choices in discovery, settlement and/or trial strategy can also lead to legal malpractice claims against attorneys. For example, failing to assert certain claims or defenses could negatively affect the outcome of the client's case. Additionally, negligent settlement or trial planning could also greatly affect a client's rights & now ADA violations of harassment of disabled;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

23) Stated Claims - Failure to Know or Ascertain Deadline Correctly :

Material Facts -Sloppy, no work, no accuracy, no communication, bias, etc.

Legal Theories 1) Failing to Maintain a Comprehensive Calendaring/Docket Control System 2) Waiting Until the Last Minute to File the Complaint 3) Failing to

Know the Correct Statute of Limitation 4) Ethical Considerations to Client While each lawyer has his or her favorite clients, all clients must be treated with the same level of communication and respect that benefits the competent practice of law.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

24) Stated Claims - Clerical Errors

Material Facts -Told by Cathy Defendants clerk that errors did not matter;

Legal Theories A **clerical error** is an error on the part of an office worker, often a secretary or personal assistant. It is a phrase which can also be used as an excuse to deflect blame away from specific individuals, such as high-powered executives, and instead redirect it to the more anonymous clerical staff;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

25) Stated Claims - Errors in Record & Math explains missed deadlines

Material Facts -Errors & needed correction was ignored & no depositions, etc.;

Legal Theories – See Number 26 on how to win this Legal Malpractice Suit;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

26) Stated Claims - Lost File & Document pertains to all instances where the alleged error was due to a lost file, document, or evidence.

Material Facts- Error can't occur if Defendants won't do the work intentionally;

Legal Theories - To win a malpractice case against an attorney, you must prove four basic things:

- duty -- that the attorney owed you a duty to act properly
- breach -- that the attorney breached the duty: she was negligent, she made a mistake, or she did not do what she agreed to do
- causation -- that this conduct hurt you financially, and

- damages -- that you suffered financial losses as a result.

In practical terms, to win a malpractice case, you must first prove that your attorney made errors in how she handled your case. Then you must show that you would have won the underlying case that the lawyer mishandled. (This second part is not required in Ohio.) Finally, you will have to show that if you had won the underlying case, you would have been able to collect from the defendant.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

27) **Stated Claims - Inadequate Discovery of Facts or Inadequate Investigation :**

claimant alleges that certain facts which should have been discovered by the attorney in a careful investigation or in the use of discovery procedures were not discovered or discerned.

Material Facts – Defendants did not investigations, plead a couple questions on original petition, followed up with No Discovery in JP lawsuit against Schroeder, no deposition & gave false statements about service of summons with no documentation, held no investigations & refused all Plaintiff investigations & evidence as a "conflict of interest to protect Mr. Schroeder, while causing harm to Plaintiff as Texas licensed Attorneys violating ethics & Code of Conduct;

Legal Theories One of the most important phases of a commercial litigation or civil litigation case is discovery and inadequate fact discovery, in certain circumstances, can result in a legal malpractice claim . Fact discovery is the part of the litigation when the parties to the litigation, lead by their attorneys, investigate the facts and request information and facts from one another to help prepare the case as they move towards hearing or trial. Through discovery, the lawyers are able to further investigate and to seek the production of previously unknown facts that could be critical to the client's litigation matter, whether the facts are good or bad for the client's case. Common methods of discovery include written

interrogatories, document requests (requesting the production of paper and electronic information) and depositions;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

28) Stated Claims -Poor Communication or No Communications For Months

Material Facts- Plaintiff received no phone calls, months passed with no emails &

I had to send multiple message to find out about signed Orders with no copies;

Legal Theories Lawyers are expected to remain in constant communication with their clients regarding updates and pending deadlines. This is necessary to keep the case moving forward and to permit clients to make prudent legal decisions. Bad Attorneys **Unreturned phone calls** – A lawyer who fails to return phone calls in a timely manner, or at all, does not place a premium on client service. He may be too busy with other cases, uncertain with how to proceed with your case or ignoring your matter altogether as Bad Lawyers:

Unanswered e-mails – Like unanswered phone calls, unanswered emails can indicate that the lawyer is too busy, stressed or overwhelmed to handle your case or is not making your matter a priority.

Missed deadlines – Missing deadlines, especially court filing deadlines, can seriously damage your case. If a lawyer consistently misses deadlines, it is best to terminate the relationship and move on.

Poor attitude – A lawyer who displays a condescending, uncommunicative, rude, impatient or otherwise poor attitude may be difficult to work with. A poor attorney-client relationship may create conflict, tension, and ill-will.

Lack of proper calendaring system – A reliable, organized calendaring system is critical to meeting deadlines and prioritizing multiple obligations. A lack of a proper calendaring system can lead to missed deadlines and other disasters.

Promise of a court victory or successful outcome – An attorney should never promise his client a specific outcome, no matter how likely that outcome may be.

Be wary of promises of a sure-fire victory.

Refusal to provide references – A refusal to provide references or let you talk with past clients indicates that the lawyer had problems with past clients that he does not want you to know about.

Work Premises:

A lawyer's work premises, from the building location and exterior to the reception room, conference room and offices, can speak volumes about a lawyer's work practices and clientele. Below are a few signs that all is not well.

Office space in state of disrepair – Office space or property in poor disrepair can signal financial problems on the part of the lawyer.

Large number of empty offices – A high number of empty offices can signal significant employee turnover, too-rapid growth or financial problems.

Unkempt, disorderly office – A messy, cluttered office is a red flag for disorganization and inefficiency. Perhaps the lawyer thrives in chaos but do you want to risk losing important paperwork or missing a deadline?

Stacks of unfiled papers or unopened mail – A backlog of filing or unopened mail may indicate that the lawyer lacks proper support staff or is disorganized, unmotivated or overwhelmed.

Lawyer's Staff

A look at the lawyer's staff members and how he interacts with personnel can provide clues to his effectiveness, competence, reliability, and ethics.

Unhappy staff members – Disgruntled employees or low workplace morale can signal poor lawyer-staff communication, strained relationships and a lack of caring. A lawyer who treats staff poorly - through bullying, verbal abuse, rudeness and other behavior - can fuel conflict, tension, and ill-will. If the lawyer fails to treat his employees well, will he treat clients well?

High turnover rate – High employee attrition can signal dissatisfaction with the law firm in general or the lawyer specifically. Committed and satisfied employees are more likely to remain with a firm, regardless of pay or benefits.

Lack of staff - A lawyer who lacks adequate support staff may be difficult to work with or may be experiencing financial difficulties.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

29) Stated Claims – Omissions & Collusion

Material Facts Defendants refusal to update case, correct errors, disclose conflict of interest, no discovery, no correct pleadings & stated claims, no jury trial, no mediation & waiting until last minute to withdraw are all omissions & collusion with Wormington Law Firm Defendants & partners that never talk & conflict of interest;

Legal Theories It becomes evident that there is in *Collusion* with the opposing side and there is *intent* and *Self Dealing* through the Errors of Omission

Collusion - A secret agreement between two or more persons, who seem to have conflicting interests, to abuse the law or the legal system, deceive a court or to defraud a third party.

Omission - Omission is a failure to carry out or perform an act. Omission is a neglect of duty. Law imposes a duty on every person to take adequate action to prevent a foreseeable injury. In Criminal law, omissions may give rise to lawsuits and will constitute a guilty act if a person breaches his duty. If a person fails to act knowingly that his/her failure would cause a harm or injury to other person(s), then such a failure constitutes an omission. Act of leaving out a word or other language from a contract or any other document is also an omission; however, the document may be reformed if the parties agree that omission was a mutual mistake.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

30) Stated Claims – Neglect Against Plaintiff & Schroeder JP Lawsuit

Material Facts - A disregard of duty resulting from carelessness, indifference, or Willfulness as demonstrated for over a year by these Defendants in winning case;

Legal Theories – A client will need to establish several factors in order to prevail. The most common type of legal malpractice occurs because of negligence, the breach of a fiduciary duty, or a breach of contract. (These items Court demanded Plaintiff remove.)

The failure to file paperwork by a deadline is a form of negligence. To establish legal malpractice under negligence, it is necessary to demonstrate the following:

- The lawyer owed a duty to provide competent and skillful representation;
- The lawyer breached the duty by acting carelessly or by making a mistake;
- The lawyer's breach caused an injury or harm;
- The harm caused a financial loss.

To win a legal malpractice claim, it is also necessary to show that if the lawyer had been competent the client would have prevailed in the underlying case and the client would have been able to collect the damage award from the defendant. This element, known as causation, is often the most difficult to prove in a legal malpractice lawsuit.

Does my lawyer have to keep our communication confidential?

Yes. An attorney has a duty of confidentiality to a client. An attorney, therefore, may not disclose the information a client reveals to a third party without the consent of the client. For the most part, except under a few circumstances, this applies regardless of whether the client requested confidentiality as Plaintiff Amrhein did against Schroeder;

If it appears that the lawyer has stopped working on a case altogether, this may amount to legal malpractice. An attorney has a duty of due diligence, which means that the attorney must work promptly and diligently on a case until it reaches completion. The failure to do so violates the attorney's duty to a client.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

31) Stated Claims – Concealment Against Plaintiff Amrhein

Material Facts - Lack of service, lack of discovery, lack of intent, timely notice of settlement offer, no jury trial, no lawyer at trial, no mediation, no correction of errors, late notice of judge's Orders, wrong court & jurisdiction wrong liability;

Legal Theories Concealment is the act of refraining from disclosure especially an act by which one prevents or hinders the discovery of something; a cover-up. It is an affirmative act intended or known to be likely to keep another from learning of

a fact of which s/he would otherwise have learned. Such affirmative action is always equivalent to a misrepresentation & has any effect that a misrepresentation would have For example, unlawful suppression of any fact or circumstance by one of the parties to a contract from the other, which in justice ought to be made known, will amount to concealment as these Defendants did to Plaintiff as sues;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

32) Stated Claims – Deception or Deceit Against Plaintiff Amrhein

Material Facts – Plaintiff had no reason to believe that they would hurt & destroy Plaintiff causing all these losses & when discovered wanted to terminate them, but just wanted to get JP case before the jury;

Legal Theories - Deceit is the intentional act of misleading a person of ordinary prudence by giving false impression. If a person knowingly or recklessly misrepresent a fact to another he is said to deceit the other. Tortuous liability can be imposed on a person who falsely represents a fact with the intention to make another person detrimentally rely and act upon it.

The four elements of the tort of deceit are: False representation of a fact.

Representation made with the knowledge that it is false.

Intention to make the plaintiff to act upon the belief that the fact is true.

Proof of damage sustained by the plaintiff upon acting on the false information.

Deception may involve dissimulation, distraction, camouflage, concealment, propaganda, or sleight of hand.

Generally deception is the act of causing one to believe information that is not true or an untruth or not the whole truth. The Federal Trade Commission will find an act or practice deceptive if there is a misrepresentation, omission, or other practice that misleads the consumer acting reasonably in the circumstances, to the consumer's detriment.

(a) A person who:

(1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;

(2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;

(3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;

(4) knowingly or intentionally, in the regular course of business, either:

(A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or

(B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;

(5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;

(6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;

(7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;

(8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;

(9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;

(10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5; or

(11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service;commits deception, a Class A misdemeanor.

(b) In determining whether an advertisement is false, misleading, or deceptive under subsection (a) (9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

33) Stated Claim - Harassment Against Plaintiff Amrhein

Material Facts – This is like harassment of Mr. Schroeder as experience who Defendants defended & now as Plaintiff is disabled, sick in need of 2 back surgeries denied is treated in this way by Defendants & their Attorneys with threats;

Legal Theories - Harassment is governed by state laws, which vary by state, but is generally defined as a course of conduct which annoys, threatens, intimidates, alarms, or puts a person in fear of their safety. Harassment is unwanted, unwelcomed and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment for the victim. Harassing behavior may include, but is not limited to, epithets, derogatory comments or slurs and lewd propositions, assault, impeding or blocking movement, offensive touching or any physical interference with normal work or movement, and visual insults, such as derogatory posters or cartoons.

The following is an example of a state law dealing with harassment: "S 240.25 Harassment in the first degree.

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to

activities regulated by the national labor relation labor relations act, as amended, the railway labor act, amended, or federal employment labor management act, as amended.

Harassment in the first degree is a class B misdemeanor. S 240.26 Harassment in the second degree. A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.
Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended. Harassment in the second degree is a violation. S 240.30 Aggravated harassment in the second degree.

A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:

1. Either (a) communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or (b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or
2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or
3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person`s race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or
4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.

Aggravated harassment in the second degree is a class A misdemeanor .S 240.31 Aggravated harassment in the first degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person`s race, color, national origin, ancestry, gender, religion, religious practice, age,

disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or
2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years.

Relief Sought- Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

34) Stated Claims – Threats & Intimidation Against Plaintiff Amrhein

Material Facts - Applies to Defendant Bollinger, Law Firm, Defendant Schroeder,

their Attorneys & by Court Orders to deny Plaintiff safety, healthcare & lawsuit;

Legal Theories Intimidation means to make fearful or to put into fear. Generally, proof of actual fear is not required in order to establish intimidation. It may be inferred from conduct, words, or circumstances reasonably calculated to produce fear.

Intimidation of witnesses or victims happens when a person, with the intent to or with the knowledge that his/her conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, intimidates or attempts to intimidate any witness or victim to:

(1) Refrain from informing or reporting to any law enforcement officer,

prosecuting official or judge concerning any information, document or thing relating to the commission of a crime.

(2) Give any false or misleading information or testimony relating to the commission of any crime to any law enforcement officer, prosecuting official or judge.

(3) Withhold any testimony, information, document or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge.

(4) Give any false or misleading information or testimony or refrain from giving any testimony, information, document or thing, relating to the commission of a crime, to an attorney representing a criminal defendant.

(5) Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.

(6) Absent himself from any proceeding or investigation to which he has been legally summoned.

Threats of harm generally involves a perception of injury. Harm is physical or mental damage, an act or instance of injury, or a material and tangible detriment or loss to a person. The precise definition varies according to the context in which it is used. For example, in child welfare law, one definition is as follows:

"Threat of harm is defined as, "all actions, statements, written or non-verbal messages conveying threats of physical or mental injury which are serious enough to unsettle the child's mind. It includes: expressions of intent to inflict pain, injury, or punishment;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

35) Stated Claims - Undue Influence & or Duress

Material Facts – Defendants influenced Plaintiff directly & indirectly to act without knowledge of the facts in the JP Court, Mr. Schroeder did that & was protected by Plaintiff's attorneys, these Defendants Attorney & the Court is doing it now to get me to drop this lawsuit, knowing it is not fair, right or just, which is refused now & later;

Legal Theories - Undue influence is a term often used in will contests to refer to outside pressures which negate the free will of the testator (will maker), so that the maker of the will lacks the necessary mental capacity for a valid will. Undue influence may take the form of isolating the weaker person, promoting dependency, or inducing fear and distrust of others, among other manipulations. Undue influence, like mental capacity, raises the question of whether an individual is acting freely. Duress is usually claimed as a factor in the conclusion that undue influence existed. However, duress is a causative factor, whereas undue influence is a determination that the person lacked the required mental state to legally make a decision due to duress or other factors, and based upon the following elements:

The will contestant must prove:

1. the existence and exertion of an influence;
2. the effective operation of such influence so as to subvert or overpower the mind of the testator at the time of the execution of the testament; and
   the execution of a testament which the testator thereof would not have executed but for such influence.
   Typically, courts that make determinations of whether or not undue influence has been exercised. In doing so, they consider a variety of factors, including whether the transaction took place at an appropriate time and in an appropriate setting and whether the older person was pressured into acting quickly or discouraged from seeking advice from others. Courts also consider the relationship between the parties, and the "fairness" of the transaction;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

36) Stated Claims - Age & Disability Discrimination

Material Facts – Plaintiff has been denied healthcare as a disabled person to affect this lawsuit & 2 formal complaints were filed in Washington, D.C. & Collin County, Texas with no immunities & no alternative as causing personal injuries to Plaintiff Amrhein & 3 hospitalizations with medications & serious pain & suffering that if not stopped will go public with the story against all participants as stay affect is January 16, 2018 & makes all Orders null & void as a matter of law, so stop all contacts of harassments immediately due to disability & senior age;

Legal Theories Discrimination refers to the treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit. Discrimination can be the effect of some law or established practice that confers privileges on a certain class or denies privileges to a certain class because of race, age, sex, nationality, religion, or

handicap. Federal law, including Title VII of the Civil Rights Act, prohibits employment discrimination based on any one of those characteristics. Other federal statutes, supplemented by court decisions, prohibit discrimination in voting rights, housing, credit extension, public education, and access to public facilities. State laws also provide further protection against discrimination. The term discrimination is also used to refer to the effect of state laws that favor local interests over out-of-state interests. However such a discriminatory state law may still be upheld if it is narrowly tailored to achieve an important state interest. There is no Texas or officials' immunities for violations; Americans With Disabilities Act ADA is federal law, with no immunities & must be upheld or violators will be held responsible as in this lawsuit & County Court No 5;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

37) Stated Claims - Bias Against Plaintiff

Material Facts -Plaintiff has been denied healthcare as a disabled person to affect this lawsuit & 2 formal complaints were filed in Washington, D.C. & Collin County, Texas with no immunities & no alternative as causing personal injuries to Plaintiff Amrhein & 3 hospitalizations with medications & serious pain & suffering that if not stopped will go public with the story against all participants as stay affect is January 16, 2018 & makes all Orders null & void as a matter of law, so stop all contacts of harassments immediately due to disability, senior age & woman;

Legal Theories Bias is an unfair act or policy stemming from prejudice. Bias against certain traits, such as race, religion, sex, and handicaps, is prohibited in certain areas,

such as employment and public services. In deciding legal disputes, a judge is duty bound to render an unbiased opinion, based upon a fair and impartial application of the law to the facts of the case.

For some state law enforcement purposes, a bias incident is a crime defined as any suspected or confirmed offense or unlawful act which occurs to a person, private property, or public property on the basis of race, color, religion, gender, handicap, sexual orientation or ethnicity.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

38) Stated Claims – Prejudice Against Plaintiff

Material Facts – As in this lawsuit Plaintiff has been the subject of prejudice as woman, pro se, threat to legal community for exposure of wrongdoing, etc. & to protect their own offenders & violations of laws as required by election, oath of office & position of authority as in this lawsuit;

Legal Theories - Prejudice means "pre-judging" something. In general, it implies coming to a judgement on the subject based on false beliefs or before knowing where the preponderance of the evidence actually lies. Prejudice may involve discriminatory attitudes of individuals toward people or things or impairment to the rights of a party in a legal dispute.

The phrase "without prejudice" means that a claim, lawsuit, or proceeding has been brought to a temporary end but that no legal rights or privileges have been determined, waived, or lost by the result. For example, if a party brings a lawsuit in small claims court but discovers that the claim is over the amount for that court to have jurisdiction, the lawsuit can be dismissed "without prejudice". This means that the dismissal is no bar to bringing a new lawsuit in a court that does have jurisdiction.

By contrast with prejudice means that a party's legal rights have in fact been determined and lost. To continue the same example, if instead the court had jurisdiction, but the

plaintiff did not appear for the trial, the court would dismiss the case "with prejudice". That dismissal is a judgment against the plaintiff "on the merits" of the case, and extinguishes the claim that was being sued over. However, this does not prevent an appeal or a trial de novo if ordered by a higher court.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

39) Stated Claim - Retaliation Against Plaintiff by Defendants, Attorneys

Material Facts - As in this lawsuit Plaintiff has been the subject of prejudice & retaliation as woman, pro se, threat to legal community for exposure of wrongdoing, etc. & to protect their own offenders' secrets & violations of laws as required by election, oath of office & position of authority as in this lawsuit;

Legal Theories Retaliation generally is the act of seeking revenge upon another. Various federal and state laws, which vary by state, protect certain persons who seek to assert their legal rights from retaliation. For example, there is protection for whistleblowers under federal acts and related statutes that shield employees from retaliation for reporting illegal acts of employers. An employer is prohibited from any type of retaliation, as, discharging, demoting, suspending or harassing whistle blower.

Typically, to be entitled to whistle blower protection, an employee must report an employer's alleged illegal act to the proper authority, such as a government or law-enforcement agency, rather than merely reporting within the company. However, the employee might be protected from retaliation by public policy or other laws. For example, Title VII of the Civil Rights Act protects an employee against retaliation for reporting sexual harassment to the human resources department.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

40) Stated Claims – Torts Against Plaintiff by Defendants & Their Attorneys

Material Facts – Torts by Defendants, Wormington Law Firm, Court Judge & their Attorneys, while Plaintiff's harms & injuries are ignored & or dismissed;

Legal Theories - Torts are civil wrongs, as opposed to criminal offenses, for which there is a legal remedy for harm caused. Tort law is law created through judges (common law) and by legislatures (statutory law). The primary aim of tort law is to provide relief for the damages incurred and deter others from committing the same harms. A successful plaintiff may recover loss of earnings capacity, pain and suffering, reasonable medical expenses, present and future expected losses, and other monetary relief for foreseeable harm suffered by the wrongful act as in the basis of this lawsuit;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

41) Stated Claims - Intentional Torts Against Plaintiff by Defendants, et al

Material Facts- Torts by Defendants, Wormington Law Firm, Court Judge & their Attorneys, while Plaintiff's harms & injuries are ignored & or dismissed;

Legal Theories Torts are acts committed by one or more individuals or entities ("tortfeasors") that result in harm to another individual or entity. The harm is often physical injury, but it can also include reputational harm or property damages. Most torts are caused by negligence or carelessness, but some are intentional.

Assault, slander, defamation, misrepresentation fraud are intentional torts & crimes;

Relief Sought- Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

42) Stated Claims - Deceptive Trade Practices

Material Facts – False advertisement, false mission statement, false claims made as competent with expertise, Wormington Law Firm & their Defendant Attorneys did not have as claimed. As consumer of legal services Plaintiff was injured by Defendants causing damages & losses & failed to disclose information, potential harm of risk for qualities their representation did not have. Avoidance of a bill to bill undisclosed information fraudulent advice cost Plaintiff loss & damages, prevent DTPA does not apply around Texas Laws to abuse Plaintiff as consumer. Had Plaintiff had knowledge of Wormington Law Firm services I would not have hired them as fraudulent, corrupt & Deceptive Trade Practices Act.

[illegible]

Legal Theories Deceptive Trade Practices Act

The Texas Deceptive Trade Practices Act regulates most business activities in Texas, including the conduct of attorneys. For a client to prevail on a DTPA claim, the client

[redacted]

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

43) Stated Claims – Conspiracy & Cover Up To Defraud Plaintiff of Rights

Material Facts – Defendants disregard for Plaintiff's lawsuit that was filed incorrectly had no affect on them, but a huge affect on Plaintiff & her life by a con man protected, who decided for kicks he would steal, damage & harm Plaintiff;

Legal Theory - *Intention* and you were Deceived and it is evident that there was Conspiracy and what seemed like a series of bad hearings is actually scripted.

#7.

Relief Sought Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

44) Stated Claims - Libel or Slander & Defamation

Material Facts – This is why the false documents filed by Defendants' Attorney on February 9, 2018 will be subject to slander suit & their names are being turned over to Washington D.C. for interference of Federal Bureau & governmental Investigations by Authorities causing offenders liabilities;

Legal Theories - Defamation is an act of communication that causes someone to be shamed, ridiculed, held in contempt, lowered in the estimation of the community, or to lose employment status or earnings or otherwise suffer a damaged reputation. Such defamation is couched in 'defamatory language'. Libel and slander are subcategories of defamation. Defamation is primarily covered under state law, but is subject to First Amendment guarantees of free speech. The scope of constitutional protection extends to statements of opinion on matters of public concern that do not contain or imply a provable factual assertion Under New Jersey law, defamation is defined as "(1) a defamatory statement of fact; (2) concerning the plaintiff; (3) which was false; (4) which was communicated to a person or persons other than the plaintiff; (5) with actual knowledge that the statement was false or with reckless disregard of the statement's truth or falsity or with negligence in failing to ascertain the truth or falsity; and (6) which caused damage." Huertas v. United States Dep't of Educ., 2009 U.S. Dist. LEXIS 89903, 17-20 (D.N.J. Sept. 28, 2009) Libel is published material meeting three conditions:

1. the material is defamatory either on its face or indirectly;
2. the defamatory statement is about someone who is identifiable to one or more persons; and,
3. the material must be distributed to someone other than the offended party; i.e. published, as distinguished from slander.
4. Just because it is published does not make it true, so offenders are still liable;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

45) Stated Claims - Intentional infliction of Emotional Distress

Material Facts – From June 1, 2014 to present day Defendants have cause Plaintiff the

infliction of emotional distress as it continues against this disabled Plaintiff Amrhein;

Legal Theories - Intentional infliction of emotional distress or mental distress is a tort claim for intentional conduct that results in mental reaction such as anguish, grief, or fright to another person's actions that entails recoverable damages. Some jurisdictions refer to IIED as the tort of outrage. Seeing a child die in an automobile accident from a distance or receiving a letter from someone falsely claiming that a close family member had died are all examples of intentional infliction of emotional distress.

The elements of a prima facie case for the tort of intentional infliction of emotional distress are:

- Outrageous conduct by the defendant;
- The defendant's intention of causing or reckless disregard of the probability of causing emotional distress;
- The plaintiff's suffering severe or extreme emotional distress; and
- Actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (Alcorn v. Anbro Engineering, Inc (1970) 2 Cal.3d 493, 497-498.
  Emotional distress means mental distress, mental suffering or mental anguish. It includes all highly unpleasant mental reactions, such as fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain. Severe emotional distress is emotional distress of such substantial quantity or enduring quality that no reasonable person in a civilized society should be expected to endure it. In determining the severity of emotional distress consideration is given to its intensity and duration also.

One of the major hurdles in a intentional infliction of emotional distress lawsuit is proving that the defendant's conduct was extreme or outrageous. Generally, it should be

so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, & to be regarded as atrocious, & utterly intolerable in a civilized community.

The defendant's conduct must be more than malicious and intentional; and liability does not extend to mere insults, indignities, threats, annoyances, or petty oppressions. Viehweg v. Vic Tanny Intern. of Missouri, Inc., 732 S.W.2d 212, 213 (Mo.App.1987).

Following is an example of a case law defining intentional infliction of emotional distress:

The term "intentional infliction of emotional distress" can be defined as:

conduct. . . truly extreme and outrageous. Second, the actor must either intend that his conduct inflict severe emotional distress, or know that there is at least a high probability that his conduct will cause severe emotional distress. Third, conduct must in fact cause severe emotional distress. . . Doe v. White, 627 F. Supp. 2d 905, 912 (C.D. Ill. 2009);

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages as justly entitled by laws;

46) Stated Claims - Unjust Enrichment Against Plaintiff

Material Facts –Defendants' was Plaintiff as back up work, with no work, insurance policy if needed, bribery, potential attorneys fees & now invalid Attorneys fees for violations of Texas & Federal Laws against disabled senior citizen Plaintiff;

Legal Theories - Unjust enrichment means when a person unfairly gets a benefit by chance, mistake or another's misfortune for which the one enriched has not paid or worked and morally and ethically should not keep. A person who has been unjustly enriched at the expense of another must legally return the unfairly kept money or benefits. Unjust enrichment is an equitable doctrine applied in the absence of a contract and used to prevent one person from being unjustly enriched at another's expense.

Five elements must be established to prove unjust enrichment:

1.An enrichment;

2.An impoverishment;

3.A connection between the enrichment and the impoverishment;

4.Absence of a justification for the enrichment and impoverishment; and

5.An absence of a remedy provided by law.

6. Unjust enrichment comes in many forms, favors, bribes, eliminations, etc.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

47) Stated Claims - Violation of Civil Rights : This category covers any allegations made against the attorney for violation of any civil rights protected by law. This error code would most commonly arise in a third-party action against the lawyer, and would not be used when a lawyer is retained to represent a client with respect to a violation of the client's civil rights and makes some other errors during the representation.

Material Facts – Plaintiff's civil rights have been violated by Defendants, their Attorneys & the Court Judge with demands against disabled Plaintiff Amrhein;

Legal Theories - Civil rights encompass the basic human rights that all Americans are guaranteed by the U.S. Constitution. Federal and state constitutional law, statutes, administrative regulations, and judicial interpretation have defined and expanded these civil rights over time.

Many civil rights, such as the right to be free from unreasonable search and seizure, are granted explicitly by the U.S. Constitution. Other civil rights have been created by statutes enacted by Congress or state legislatures, such as the right to be free from discrimination based on race, or the right to receive equal pay for equal work. Federal statutes in the area of civil rights law include the Civil Rights Act, the Age Discrimination in Employment Act, and the Equal Pay Act, among others. Other federal laws, supplemented by court decisions, prohibit discrimination in voting rights, housing, public education, and access to public facilities.

The U.S. Supreme Court, along with its state counterparts, has played a critical role in helping to define civil rights law. The High Court has repeatedly ruled that civil rights imply a right to privacy, even though the U.S. Constitution does not explicitly grant this right.

The many sources of civil rights and the fact that courts often modify or clarify these rights make civil rights law one of the most complex areas of practice, and many civil rights lawyers spend years gaining experience to become effective advocates for your rights.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

48) Stated Claims - Suit in Law & Equity

Material Facts – Defendants engaged in a scam just like JP Defendant Schroeder & Plaintiff will not be silenced to all these illegal acts against Plaintiff;

Legal Theories a lawsuit that will be determined according to the judgement of the court as to what is fair and equitable. A suit in equity is a legal action where the plaintiff seeks an equitable remedy. A remedy is whatever the party to a lawsuit is asking for. Remedies fall into two general categories: legal and equitable. Historically, there were courts of law and courts of equity, and each handled different types of lawsuits. This is generally no longer the case in the U.S.; however, whether courts consider a remedy legal or equitable still depends on its historical classification.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

49) Stated Claims - Violations of Americans With Disabilities Act / ADA

Material Facts Defendants, Attorneys & Court Judge knows Plaintiff is disabled in need of serious medical care with 2 back operations & infectious disease, which has all been denied to her against Federal & Texas Laws as of January 16, 2018 with threats as reported to federal authorities against Plaintiff with all participants names;

Legal Theories - The Americans with Disabilities Act (ADA) is a revolutionary piece of legislation designed to protect the civil rights of people who have physical and mental disabilities, in a manner similar to that in which previous civil rights laws have protected people of various races, religions, and ethnic backgrounds. The ADA mandates changes

in the way that both private businesses and the government conduct business to ensure that all Americans have full access to and can fully participate in every aspect of society. The ADA requires the removal of barriers that deny individuals with disabilities equal opportunity and access to jobs, public accommodations, government services, public transportation, and telecommunications. The law applies to small companies as well as to large ones, so small business owners must be aware of its provisions and how they affect their companies' employment practices, facilities, and products. The Equal Employment Opportunity Commission (EEOC) is the federal agency charged with enforcing the various aspects of the ADA.

It is estimated that 50 million Americans, or one out of every five, have a disability. As defined in the ADA, the term "disability" applies to three categories of individuals: 1) people who have a physical or mental impairment that substantially limits one or more major life activities; 2) people who have a record of an impairment which substantially limits major life activities; and 3) people who may be regarded by others as having such an impairment. For an employee or job applicant to be protected by the ADA, an individual must be "disabled" in one or more of the above manners, be "otherwise qualified" for the position, and be able to perform the essential functions of the job, "with or without accommodation."

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

50) Stated Claims - Violations of Rehabilitation Act Against Plaintiff

Material Facts – Defendants, Attorneys & Court Judge knows Plaintiff is disabled in need of serious medical care with 2 back operations & infectious disease, which has all been denied to her against Federal & Texas Laws as of January 16, 2018 with threats of harm & damages as reported to federal authorities;

Legal Theories Section 504 of the **Rehabilitation Act of 1973**, Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq., is American legislation that guarantees certain rights to people with disabilities. It was one of the first U.S. federal civil rights laws offering protection for people with disabilities.[1] It set precedents for subsequent legislation for people with disabilities, including the Virginians with Disabilities Act in 1985 and the Americans with Disabilities Act in 1990.

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

51) Stated Claims- Improper Withdrawal a question of representation arises. It covers instances where the claimant asserts that a lawyer-client relationship has been established, even if the attorney denies it. It also covers a withdrawal from representation improperly communicated by the attorney.

Material Facts – Attorney Bollinger & Defendants did not act like qualified Attorney with skill & care & withdrew right before the JP Trial in wrong Court, wrong stated claims & wrong jurisdiction as the fix was in as con bribed & Plaintiff did not consent as could get no attorney on weeks short notice;

Legal Theories State rules of procedure, which vary by state, govern the withdrawal of a motion, plea, or representation of a party. Usually, a withdrawal of an attorney is made in conjunction with a motion to substitute another attorney as the attorney of record in the case.

The following is an example of a state rule governing withdrawal of attorneys: 1:11-2. Withdrawal or Substitution

(a) Generally. Except as otherwise provided by R. 5:3-5(d) (withdrawal in a civil family action),

1. prior to the entry of a plea in a criminal action or prior to the earlier of the pretrial conference or the fixing of a trial date in a civil action, an attorney may withdraw upon the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se. If the client will appear pro se, the withdrawing attorney shall file a substitution. An attorney retained by a client who had appeared pro se shall file a substitution, and
2. after the entry of a plea in a criminal action or the earlier of the pretrial conference or fixing of a trial date in a civil action, an attorney may withdraw without leave of court only upon the filing of the client's written consent, a substitution of attorney executed by both the withdrawing attorney and the substituted attorney, a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing

attorney and the substituted attorney that the withdrawal and substitution will not cause or result in delay.
(b) Professional Associations. If a partnership or attorney assumes the status of a professional corporation, or limited liability entity, pursuant to Rules 1:21-1A, 1:21-1B or 1:21-1C, respectively, or if a professional corporation or a limited liability entity for the practice of law dissolves and reverts to an unincorporated status, it shall not be necessary for the firm to file substitutions of attorney in its pending matters provided that the firm name, except for the addition or deletion of the entity designation, is not changed as a result of the change in status.
Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

52) Stated Claims -Obstruction of Justice by Officers of the Court

MateriaL Facts- Plaintiff has been forced to deal with the Obstruction of Justice for

20 years as moral standard decline & lying becomes a way of life to save themselves;

Legal Theory Obstruction of justice is defined in the omnibus clause of 18 U.S.C. § 1503, which provides that "whoever . . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be (guilty of an offense)." Persons are charged under this statute based on allegations that a defendant intended to interfere with an official proceeding, by doing things such as destroying evidence, or interfering with the duties of jurors or court officers.

A person obstructs justice when they have a specific intent to obstruct or interfere with a judicial proceeding. For a person to be convicted of obstructing justice, they must not only have the specific intent to obstruct the proceeding, but the person must know (1) that a proceeding was actually pending at the time; and (2) there must be a nexus between the defendant's endeavor to obstruct justice and the proceeding, and the defendant must have knowledge of this nexus.

§ 1503 applies only to federal judicial proceedings. Under § 1505, however, a defendant can be convicted of obstruction of justice by obstructing a pending proceeding before Congress or a federal agency. A pending proceeding could include an informal investigation by an executive agency. THE LEGAL PROCESS

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

53) Stated Claims - Fraud Upon the Court:

Material Facts- This is getting to be the norm with officers, who try to cover up truth as winning at all costs with denied evidence, threats, dirty tricks & favors;

Legal Theories Fraud Upon the Court is related to officers of the court that directly commit fraud in their direct pleadings to the court. raud on the court occurs when the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes material misrepresentations to the court. Fraud upon the court makes void the orders and judgments of that court.

In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court 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 is 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."

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

54) Stated Claims Rules of Professional Conduct - Attorneys & Ethic Standards

Material Facts- Judge Wilson wants this deleted, but basis for licensed attorneys that violates laws & basis in legal Malpractice to manipulate this court record that shows the seriousness of Defendants illegal acts breaching their own conduct

Legal Theories The Code of Ethics maintains that you must:

- Place integrity of profession and the interests of clients above your own interests;
- Act with integrity, competence, and respect;
- Maintain and develop your professional competence;

The Standards of Professional Conduct cover:

- Professionalism and integrity of the capital markets;
- Duties to clients and employers;
- Investment analysis and recommendations;

- Conflicts of interest and your responsibilities;

Relief Sought - Punitive Damages, Special Damages, General Damages, Treble Damages, Actual Damages, Pain & Suffering Damages justly entitled by laws;

CASES TO BE PROVEN IN LEGAL FOR MALPRACTICE DAMAGES

DAVID SCHROEDER LAWSUIT

1) On the David Schroeder Lawsuit known as Case No. 01-SC-16-00165, that Defendants failed to represent Plaintiff Amrhein, filed in the wrong Court, in the wrong jurisdiction, for the wrong amount, refused to communicate for months, refused to correct errors, refused to turn over complete client file, refused to mediate, refused to file for jury trial, refused to add assault charges, "conflict of interest," threats made to Plaintiff Amrhein, that too is a lawsuit within a lawsuit that would have been won, if not for the damages, harms & injuries caused by the Wormington Law Firm & all Defendants within, causing this lawsuit;

a) Plaintiff Amrhein will provide exhibits of Mr. Schroeder's mugshot, police & arrest certified court records, jail time, bank receipts, no rent paid, damages to Plaintiff Amrhein's property, theft of personal property, police records as filed, assault charges filed, all bills for damages & itemized thefts;

b) McKinney Police Detective & District Attorney's sworn testimony of assault investigation;

c) Subpoena testimony of Judge Paul Raleeh in Collin County Justice Court as to court filing, pre trial hearing, evidence examined & all Orders for Darlene Amrhein v. David Schroeder with all Court recommendations;

d) Subpoena testimony of David Schroeder's Attorney & court actions in case 002-2663-2017 as filed;

e) Subpoena testimony of Collin County Judge Barnett Walker & court actions

in case 002-2663-2017, evidence examined & his Court Order;

f) **Certified therapy records** after assault & damages done to Plaintiff Amrhein;

g) **Plaintiff Amrhein's sworn testimony** from June 1, 2014 to present date with description of activities & abuses at home from Sept. 2014 to March 10, 2015 & aftermath with harassments, threats, phone calls & use of fraudulent name;

h) **All conversations as logged** between David Schroeder & Darlene Amrhein;

i) **David Schroeder negligent misrepresentations** made to Plaintiff Amrhein to induces, defraud, set up & attempt to take Plaintiff Amrhein's property;

j) **Exhibits of all evidence** in the Amrhein v. Schroeder lawsuits;

k) **Certified by Dallas marriages**, letters & Dallas divorce of third wife;

l) **Medical conditions of David Schroeder** & all medications with behaviors;

m) **Sworn Testimony by Darlene Amrhein** of all professionals contacted;

n) Subpoena of ex-wives, family & friends for sworn testimony about Schroeder;

o) All jobs held by David Schroeder from June 1, 2014 to the present & salaries;

p) All of above a to p will prove the David Schroeder lawsuits as not properly represented by Wormington Law Firm & all their Defendant Attorneys, causing damages, harms & injuries to Plaintiff Amrhein as the basis of this lawsuit;

ANTHONY J. BALISTRERI'S STATUTE OF LIMITATIONS LAWSUIT

2) **Anthony J. Balistreri** as deceased is represented as follows in this lawsuit:

a) **Attorney Stuart Kalb** with 35 years of experience & as an expert witness with direct knowledge of Plaintiff Balistreri, his estate & all estate planned records;

b) **Attorney Laurie Peck** as experienced Attorney, witness & notary with direct knowledge & estate planning of Plaintiff Anthony J. Balistreri's estate records;

c) **Anthony J. Balistreri will represent himself** & testify by an almost 1 hour auto & visual CD in his estate planning preparation, wishes & statements before

Attorney Stuart Kalb, Attorney Laurie Peck and two separate witnesses as present with direct knowledge & as signed in these documents & as witnessed in this CD;

d) **Financial Advisor Richard Dean** as witness & with direct knowledge of Anthony Balistreri, years of personal interaction & as financial consultant expert;

e) **Darlene C. Amrhein** as the 10 year plus caregiver to Anthony J. Balistreri 24/7 & as Court appointed Guardian to him from 2006 until his death Sept. 24, 2013;

f) **Collin County Probate Judge Weldon Copeland** as witness to testify to Probate Court annual reports during 2006 to 2013 guardianship with Anthony J. Balistreri & Darlene C. Amrhein until September 24, 2013 death;

g) **Exhibits** of all trust documents as prepared by professionals, all guardianship documents, all medical records, all audio tapes of his doctors' & all conditions of nursing home with various witnesses that observed Anthony Balistreri from July 26, 2013 until October 3, 2013 while alive & after his death to burial to prove this lawsuit within a lawsuit to demonstrate this case & losses that would have been won if not for the harms & injuries by Attorney Bollinger, Wormington Law Firm & all 4 Defendants within Wormington Law Firm as served in process;

h) **Anthony J. Balistreri's primary care physicians**, heart specialist, surgeons will be called to testify to their direct knowledge & conditions of him while alive;

i) **Subpoena of the Nursing Home Management & Staff** as to Anthony J. Balistreri & their direct knowledge of him before his death on September 24, 2013, all medications, neglect, injuries, harms, beatings, starvation, loss of about 46 pounds in 6 weeks, drugging, bodily harm, condition when released to emergency room of Presbyterian Hospital Dallas & then transferred to intensive care;

j) **Presbyterian Hospital Dallas Management,** 3Physicians, ER hospital staff, & intensive care nursing staff will be witnesses in this lawsuit on death of Anthony J.

Balistreri, along with custodian of all of his medical records;

k) **Close friend Karen Brandt** with direct knowledge & inter action with Anthony J. Balistreri before & after his death on Oct. 3, 2013;

l) **Witness by subpoena** who witnessed Anthony J. Balistreri drugged & restrained, starved & tied in a wheel chair, while in the nursing home with records;

m) **Dallas Police Reports** filed by Anthony J. Balistreri & Darlene Amrhein from July 26, 2013 to October 15, 2013 for abuse & death of Anthony J. Balistreri;

n) **Officials of Government** complaints on behalf of Anthony J. Balistreri abuses in nursing home done by Darlene C. Amrhein as care giver;

o) **Adult Protective Services** for abuses of Anthony Balistreri July 2013 to death;

p) **Subpoena of Hospital staff** from July 26, 2013 to September 15, 2013;

q) **Subpoena of all Medicare & United Healthcare** reporting of abuses of Anthony J. Balistreri to insurance representatives;

r) **Subpoena of Reports of Medicare Frauds** by two Nursing Home physicians as related to Anthony J. Balistreri contributing to his death;

s) **3 Other local nursing homes** that interviewed Plaintiff Amrhein on abuses of Anthony J. Balistreri to try to transfer him from their abuses

t) **Conformation of throwing out Anthony J. Balistreri food** as sent by Darlene Amrhein, theft of his personal belonging & other abuses from July 26, 2013 to September 24, 2013;

u) **Colored CD Video & Audio** of Anthony J. Balistreri in his suit speaking to Attorney Laurie Peck & Attorney Stuart Kalb in the presence of 2 other witnesses about his estate planning as he smiles in 2004 looking toward the future in Texas;

v) **Colored pictures** of Anthony J. Balistreri's physical injuries, bruises, cuts &

beatings from July 26, 2013 to September 24, 2013 in nursing home, Dallas, Texas;

w) The difference photos will turn your stomach as he lays dying & hopefully everyone will get to experience this as these Defendants & Attorneys are apart of the problem as you waste your lives protecting corruption by illegal acts of lying for some money for conspiracy & cover up;

x) **All therapy records,** medical records, complaint records prepared & certified

All of these a to w will prove that Anthony J. Balistreri lawsuit would have been won, if not for the damages, harms, delays of Defendants by ignoring known "statute of limitations;"

y) **LEGAL MALPRACTICE 2 LAWSUITS & ABOVE STATED CLAIMS**

All attorneys are required to adhere to their state's Rules of Professional Conduct, a body of regulations that requires, in broad terms, a thorough understanding of the law and a commitment to communicating it transparently and accurately to clients.

Legal malpractice or negligence can take any of the following forms:

- Failure to keep the client informed about essential case information.
- Failure to account for important deadlines or requirements, such as the statute of limitations for the case.
- Errors that lead to a case being dismissed or lost.
- Conflicts-of-interest, such as representing opposing parties.
- Misuse or theft of client resources.
- Failure to obtain client consent for any legal path or action.
- Errors in drafting agreements or other legal documents.
- Failing to file timely before "statute of limitations expires.

Legal malpractice can have lifelong repercussions for its victims. When you go to a lawyer, you are often already in a vulnerable situation. You rely on the expertise and professional conduct of your attorney to help you navigate the legal system.

61.

LEGAL MALPRACTICE ATTORNEYS AS PLAINTIFF INTERVIEWS:

1) **Johnston Tobey Baruch – Dallas, TX**

2) **Mark Ticer – Dallas, TX**

3) **Ogborn MIHM Denver, Co.**

4) **Business Trial Group, Florida**

5) **Law Office of Brian H. Fant, P.C., Dallas, TX**

6) **Brown & Brothers – Dallas, TX** Omit

7) **Richerson Law – Duncanville, TX.**

8) **Law Office of Eric G. Olsen, Roundrock, TX**

9) **Nowak & Stauch , Dallas, TX**

10) **Shuford Law Firm , Dallas, TX**

11) **Law Offfice of James E. Pennington, Dallas, Tx**

12) **Attorney Frank L. Branson – Lawyer referral, but no name given.**

COMMON LAW & CASE LAW ON FRAUD & LEGAL MALPRACTICE LAWSUITS 2 CASES WITHIN A CASE

Common law (also known as judicial precedent or judge-made law, or case law) is that body of law derived from judicial decisions of courts and similar tribunals.[1][2][3][4][5] The defining characteristic of "common law" is that it arises as precedent. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts, and synthesizes the principles of those past cases as applicable to the current facts. If a similar dispute has been resolved in the past, the court is usually bound to follow the reasoning used in the prior decision (a principle known as *stare decisis*). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), and legislative statutes are either silent or ambiguous on the question, judges have the authority and duty to resolve the issue (one party or the other has to win, and on disagreements of law, judges make that decision).[6] The court states an opinion that gives reasons for the decision, and those reasons agglomerate with past decisions as precedent to bind future judges and litigants. Common law, as the body of law made by judges,[7][8] stands in contrast to and on equal footing with statutes which are adopted through the legislative process, and regulations which are promulgated by the executive branch (the interactions are explained later in this article). *Stare decisis*, the principle that cases

62.

CAUSES OF ACTION THIS COURT ORDERS TO BE REMOVED TO OBSTRUCT JUSTICE & COMMIT "FRAUD UPON THE COURT"

(Exhibit A)

1) **Texas Rules of Civil Procedure** is not a causes of action to be removed, but laws to be followed as a matter of law & Rule of Law as legislated with due process as required before the loss of property & assets;

2) **United States Constitution ,** Amendments / Bill of Rights are not causes of action to be removed, but enforced as a matter of law & Rule of Law with due process as required before the loss of property & assets promised to all citizens;

3) **Violations of Texas Disciplinary Rules of Professional Conduct** is a

requirement of all Defendants Bar license to Practice in the State of Texas & subject to discipline, suspension & loss of license to practice; - Cause of Action & apart of Legal Malpractice;

4) **Breach of Fiduciary Duty** - Cause of Action & apart of Legal Malpractice;

5) **Breach of Contract** – Cause of Action & Apart of Legal Malpractice;

6) **Fraud** – Various Frauds are apart of Legal Malpractice;

7) **Violations of DTPA** are apart of Legal Malpractice if used against law;

8) **Bad Faith** – Bad Faith is apart of Legal Malpractice as used in this lawsuit;

9) **Negligent Misrepresentation** is apart of the Legal Malpractice in lawsuit;

10) **Conspiracy** is apart of the Legal Malpractice in this lawsuit & 5 Defendants;

11) **Alleged Discriminations** is apart of the Legal Malpractice in lawsuit;

Exhibit A – January 30,2018 Court Order, which is invalid as Notice of Motion To Stay & Continue this lawsuit on inactive docket due to Plaintiff's disability & Federal Laws under the Americans With Disabilities Act – ADA on January 16, 2018 in effect & abuse of discretion by Judge Dan Wilson to deny Plaintiff;

Exhibit A is invalid on Motion To Dismiss by TRCP 91a because no hearing was conducted in 60 days by February 6. 2018 required, Defendants Attorney aware of ADA as filed notice to this court, making this January 30, 2018 invalid in all things as claimed, including any & all attorneys fees with continued harassment & threats more than 24 times by this Court and Defendants Attorneys since January 16,2018;

Doe v Doe Law Firm Settlement: $3 million

Transactional Legal Malpractice relating to the sale of plaintiff's business.

Doe Company v. Doe Law Firm Verdict: $45.6 million

Legal malpractice, fraud, and breach of fiduciary duty case involving concealment of conflict of interest in real estate transaction. Confidential settlement reached before punitive damage phase.

Doe Individual v. Doe Law Firm Settlement: $9.6 million

Legal malpractice against attorneys who negligently prepared and tried a special education /brain injury action against a government entity.

Doe City v Doe Law Firm Settlement $8 million

Legal malpractice action involving the failure to adequately prepare transactional documents on behalf of Government Entity.

Doe Individuals v. Doe Law Firm Settlement: $3 million

Legal malpractice action involving violation of statute of limitations on an underlying wrongful termination action.

Doe Individual v. Doe Law Firm Settlement: $2.2 million

Legal malpractice action against attorneys who negligently advised doctor as to his liability and exposure in fraud lawsuit against him and others by shareholders of a corporation.

City of Glendora v. Burke, Williams & Sorensen Settlement: $935,000

Legal malpractice action involving failure of law firm to advise adequately a governmental entity regarding land use issue.

Botez v. Hertzfeld & Rubin Verdict: $900,000

Trial involving legal malpractice and conflict of interest over real estate development in Romania.

Fenmore v. Loeb & Loeb Confidential Settlement

Settlement of a legal malpractice claim that stemmed from the handling of a probate and estate matter.

Cedars Sinai Medical Center v Mitchell, Silberberg & Knupp: Confidential Settlement

Legal Malpractice Action regarding the failure to timely file a patent application relating to an improvement to laser eye surgical procedures.

DOES v. DOE LAW FIRM: Confidential Settlement:

DOES hired DOE LAW FIRM to defend them in litigation involving valuable artwork. DOE LAW FIRM committed malpractice while drafting the settlement agreement. DOE LAW FIRM unsuccessfully tried to blame former clients for the malpractice, sue the clients for unpaid legal fees, and avoid liability on statute of limitations grounds.

Doe City v. Roe City Attorney
$1.5 million
Klein & Wilson represented a City against its former City Attorney for legal malpractice arising out of the City Attorney's failure to identify and resolve a conflict of interest. The conflict of interest sparked negative media attention, a public audit, and a criminal prosecution. Ultimately, the City was forced to reimburse funds spent on a public project. When Klein & Wilson substituted into the case, the former City Attorney refused to offer a penny to resolve the case. After Klein & Wilson evaluated the case and presented the former City Attorney with facts showing it had substantial exposure at trial, Klein & Wilson was successful in resolving the case for ***$1.5 million*** without taking a single deposition.

Does v. Roe Law Firm
$250,000
Klein & Wilson recovered **$250,000** in a legal malpractice case where the attorneys did a poor job preparing an underlying personal injury and civil rights case. Despite serious issues of causation, Klein & Wilson convinced the law firm's insurance carrier a jury would overlook the causation issues because of the attorneys' misconduct.

Doe v. Roe Law Firm
(Settlement)
Klein & Wilson's client hired a law firm to represent her in a divorce case. The attorney did a poor job preparing her case for trial and relied too heavily upon an expert who did not know what she was doing. When the client complained that the expert's report was filled with mathematical mistakes, the lawyer panicked, made an inappropriate physical contact with the client, and forcefully told the client she had to settle. Klein & Wilson's client decided she could not trust the attorney and was also afraid of him because of his physical aggression. She terminated his services and asked the court for a trial continuance, but the court refused to continue the trial. The trial ended in a predictable

disaster. The defense contended the client's wounds were "self-inflicted" and that it was her discharge of the attorney which led to the disastrous trial result. Klein & Wilson was able to achieve a favorable confidential settlement for its client, allowing her to get back on track with her life and not be distracted by further litigation.

Kessler v. Horan
(Plaintiff Verdict)
In this attorney malpractice action, Klein & Wilson represented an investor who purchased real estate in Newport Beach. The attorney who represented Klein & Wilson's client in the transaction botched the transaction so badly, the client's title to the property was unclear, which resulted in several other lawsuits being filed. The attorney denied all liability and the case went to trial. The attorney was represented by one of Orange County's most experienced trial attorneys. Nevertheless, Klein & Wilson prevailed at trial and recovered all the damages it requested.

Sjostrom v. Pepper Hamilton, LLP
(Settlement)
Klein & Wilson's client purchased a business and expected to have a covenant not to compete in the sales agreement, which would have prevented the owners of the assets from competing against him. The client discovered that his lawyers did not properly draft the covenant not to compete. The client sued his former counsel, one of the largest law firms in the county. Klein & Wilson worked cooperatively with opposing counsel to resolve this case satisfactorily for all sides, without a large expenditure of legal fees.

$1,800,000 MEDICAL MALPRACTICE Legal Malpractice, **$5.2 million & $1.5 million** settlement in sexual assault case & verdict assault

$1 million settlement in sexual assault case
$640,000.00 legal malpractice settlement
$1,200,000.00 verdict: nursing home negligence resulting in wrongful death
$ 725,000.00 settlement for legal malpractice

The underline case for Plaintiff Amrhein Lawsuit against David Schroeder for sexual assault, theft, property damages, unpaid rent, etc, was not without value.

The wrongful death, killing & medical malpractice against Plaintiff Balistreri & known statute of limitations was not without value as his medical files were held by these 5 Defendants in with 2 lawsuits that were "Legal Malpractice" & will be continued with appropriate counsel after the Americans With Disabilities Act / ADA is lifted following recovery & Plaintiff's medical release of 2 back surgeries. Lawsuit for slander, harassment denied ADA will be filed on Cobb, Martinez & Woodland & Collin County Court System, Judge, et al.

66.

February 10, 2018

Collin County Administration / ADA Compliance Coordination

2300 Bloomdale Road. Suite 4192

McKinney, Texas 75071

RE: Formal Complaint on ADA

Collin County Administrator ADA Compliance,

I wish to file a formal ADA Compliance Complaint as follows:

1) I filed a formal complaint with the Department of Justice, Washington D.C. on or about February 3, 2018 about participants in Collin County Case No. 005-02654-2017 at the Courthouse 2100 Bloomdale Road, McKinney, TX. 75071;

2) The Rehabilitation Act and § 504 applies to these court record filings and my U.S. & Texas Constitutional Rights as this is all a form of age & disability discrimination, which is actionable against Collin County, Courthouse & Judge without any immunities that can be applied as clearly stated in the laws;

3) Judge Dan Wilson, County Court at Law No. 5 has denied my disability as filed on January 16, 2018 with needed medical care & treatments while medicated on narcotics for serious pain & unbalanced slippage of my spine at base & at top, which is affecting my bodily functions;

4) I need assistance to walk, can't sit or stand for any period of time at this time;

5) Judge Dan Wilson refusal of my disability & 2 back surgeries needed after three hospitalization at two different hospitals on December 26, 2017, January 5, 2018 & January 26, 2018 with multiple medical proof from doctors, bills & hospitals is unbelievable, ridiculous & unnecessary, but was done for reasons of bias, prejudice & retaliation to aid Defendants Attorneys against my health & well-being;

6) Judge Dan Wilson was not following federal laws, Americans With Disabilities Act / ADA and Texas ADA as necessary compliance of these federal protections of Plaintiff Amrhein as a "protected class," disabled senior citizen under ADA;

7) Judge Dan Wilson also does not consider in forma pauperis at Collin County Courthouse as filed & ordered a $14,100 Attorney Fees on an invalid January 30, 2018 Order contrary to this Collin County Department of financial conditions;

/.

8) Judge Dan Wilson also does not follow & enforce the Rule of Law as written & for those reason I have asked for his removal from this case as he should be impeached & removed from office as operating outside his sworn oath of office due to questionable conditions as a Collin County Judge;

9) Judge Dan Wilson has caused 22 harassments & demands made of me in about 10 days, when I am disabled & can't work without a great deal of pain, more medications & that has caused medical complications delaying my surgeries;

10) As a senior citizen on Social Security only there have been threat & demands for $14,100 plus before February 23, 2018 by this Judge & Defendants Attorney on an invalid, "abuse of discretion" Order on January 30, 2018, which has caused me more pain, stress & pressure in a weakened condition as a poor in forma pauperis;

11) I am on Medicare & the bills have been mounting as they do not pay 20%;

12) With each demand by Judge Dan Wilson, Defendants & there Attorneys has caused 2 returns to the hospital for another 5 day stay due to pain & stress demands made increasing the Medicare Bills to the federal government & me;

13) Because of this stress & unreasonable demands as disabled I have developed an infectious disease, which delays my surgeries, because of complications & high risk to my life, fueled by Judge Wilson bias, prejudice & retaliation to assist them;

14) I hope this can be resolved without need for further attorney & legal actions;

15) I have enough to deal with at this time & 2 back surgeries aren't stubbed toe;

<u>In Conclusion,</u> I am asking the Collin County Administration / ADA Compliance Coordination Officer to "enforce my protected right of the Americans With Disabilities Act / ADA with this Judge as of January 16, 2018" as filed as a "protected class," which has already been turned over to the Department of Justice, ADA Department for compliance. There is no reason for these personal injuries to occur against me at the Collin County Courthouse, as a more than 16 year McKinney resident, paying Collin County property taxes. (See attached) Order of denial to Stay & Continue this lawsuit & place on the inactive docket like other litigant events. This January 30, 2018 Order needs to be withdrawn immediately in this Court Record as signed by this offending Judge Dan Wilson & any Appeals.

Darlene Balistreri-Amrhein 2-10-18

Darlene Balistreri-Amrhein, Plaintiff, 112 Winsley Circle, McKinney, TX. 75071

Exhibit C.

IN CONCLUSION AND PRAYER FOR RELIEF

54 Stated Claims, Causes of Action, Material Facts, Legal Theories & Relief Sought in this lawsuit filed timely not according to invalid January 30, 2018 Order. **Other Examples of Plaintiff's legal malpractice include, but are not limited to:**

- Conflicts of interest
- Missing Statute of Limitations
- Errors or omissions resulting in dismissal
- Billing fraud
- Misappropriation of funds
- Breach of attorney-client privilege
- Poorly written documents
- Exerting undue influence adverse to the client's interest
- Abandonment of a client's matter
- Frivolous litigation at the expense of the client
- Lack of due diligence
- Improper legal advice
- Presenting false evidence
- Obstruction of justice
- Dishonesty & Damages
- Malfeasance & also known as professional negligence.
- **Judge Dan Wilson** was invested in the conspiracy with these 5 Defendants at Wormington & Bollinger Law Firm with their Attorneys at Cobb, Martinez, Woodland & Attorney Carrie Johnson Phaneuf to fraudulently dismantle this Legal Malpractice lawsuit with an invalid January 30, 2018 Order after violating federal law, Americans With Disabilities Act / ADA to deny Plaintiff's Motion For Stay with Notice To Defendants, false Motion to Dismiss under TRCP 91a, hold no hearings within 60 days as required, commit "Obstruction of Justice, Fraud Upon the Court," Slander Plaintiff Amrhein with false filed claims, continues more than 22 emails & mail for harassments from January 16, 2018, knowingly deny Plaintiff Balistreri his irrevocable trust protection from denied suit within "statute of limitations" period as his medical records & evidence was knowingly held by Defendants past September 24, 2015, until delivery on Nov. 23, 2015, that was to be a term of examination for only 30 days was false, case file was never reviewed by any medical professionals or anyone as promised & stated. These Defendants are total "Frauds" operating in violation of Texas & Federal Laws with their Texas license, who offered a bribe to Plaintiff Amrhein, as refused & judging by the actions of Judge Wilson it appears may have been bribed to throw this Legal Malpractice Lawsuit, as Motion to Recuse Judge Wilson filed February 8, 2018.

67.

Plaintiff plans to hire a Legal Malpractice Law Firm Lawyers for this lawsuit.

Plaintiff Amrhein will sue for any slander by false documents filed & any Ordered Security or any Attorney Fees on this invalid January 30, 2018 in this Legal Malpractice Lawsuit.

Plaintiff will be scheduled if no complications on March 5, 2018 & prayer our Law Firm Attorneys will be hired at that point.

An ADA formal complaint will be filed with the Collin County Compliance.

Formal complaint was filed with Department of Justice on or about Feb. 7, 2018.

Plaintiff Amrhein prays that all harassment stops immediately due to medical conditions & as disabled protected under federal law Americans With Disability Act / ADA with no more personal injuries by Defendants, their Attorneys & this Court.

Plaintiff will not prepare & file any other court documents, disclosure or anything else as preparing for the first surgery with my spine team & updates will be documented through my new Attorneys & Law Firm as represented timely so everyone is aware of scheduling.

All evidence, pictures, videos will be turned over to Plaintiffs' Attorneys for this lawsuit & all secondary lawsuits affected by all these Defendants in lawsuit.

Judge Dan Wilson is not to take any further actions in this lawsuit in any way.

Plaintiff's new Attorneys & Law Firm will have the right to Amend these pleadings upon notice of appearance in this lawsuit. (Exhibits A to F)

Respectfully submitted,

Darlene C Balistreri-Amrhein

Darlene C. Balistreri-Amrhein, Plaintiff

& Anthony J. Balistreri as separate Plaintiff,

who will be represented by his lawyers.

2/11/2018

* All violated federal & Texas ADA!

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VERIFICATION / AFFIDAVIT

CAUSE NO. 005-02654-2017

STATE OF TEXAS

COUNTY OF COLLIN

BEFORE ME, the undersigned Plaintiff, Darlene C. Balistreri-Amrhein, who swore in her capacity & individually on her sworn oath, deposed and said she prepared and signed Plaintiff's Timely First Amended Pleadings & 15 Notices.

This information as referenced and stated within is true and correct and of Darlene C. Balistreri-Amrhein's own personal knowledge to best of her ability & documented. This state and or federal filing is for purpose of "due process," fairness, Justice under State and Federal Laws & presented in applicable Court attached as sited for this Court filing.

Darlene C. Balistreri-Amrhein

Darlene C. Balistreri-Amrhein, Plaintiff, Pro Se

SUBSCRIBED AND SWORN TO ME, BEFORE ME: ON February 12, 2018 to Certify which witness my hand and official seal.

SEAL:

NOTARY PUBLIC STATE OF TEXAS
TREVOR HILZ
My Commission Expires
May 1, 2019

Trevor C. Hilz

Notary Public of Texas (Printed Name)

Notary Public of Texas (Signature)

Commission Expires May 1, 2019