

ORIGINAL

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED MAY - 3 1999 NANCY DOHERTY, CLERK BY _____ Deputy
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Jerry Michael Collins

vs.

Richard Lawrence, et al.

Civil Action Number:

399CVO641-P

**MOTION TO DISMISS under Rule 12(b)(6), MOTION TO ABATE DISCOVERY,
and in the alternative, ORIGINAL ANSWER OF
JUDGE LOUIS B. GOHMERT, JR.**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Louis B. Gohmert, Jr., Defendant (and since the only prior contact this Defendant has had with Plaintiff has been in Defendant's official capacity as a state district judge, Defendant is hereinafter referred to as "Judge Gohmert") in the above-styled and numbered civil cause, and would respectfully show the Court the following:

MOTION TO DISMISS

Failure to State a Cause of Action

1. Plaintiff fails to state a cause of action upon which relief can be granted. Plaintiff begins his errors against this Defendant by misspelling his name and then gets more problematic. The only direct allegation made against Judge Gohmert is that he "knowingly and willfully aided in the commission of two or more alleged predicate offenses that constitute the alleged pattern of racketeering activity." That is it. The only contact this defendant judge is aware of having with the Plaintiff came through a lawsuit filed in Smith County, Texas, in Cause #97-2850-A, styled "Jerry Michael Collins vs. Conner, Gillen, et al" that was pending in this Defendant's Court. Since the hearing on Defendant's Motion for Summary Judgement is the only direct contact Judge Gohmert had with Plaintiff, a certified copy of the transcript of the hearing is attached to Judge Gohmert's Motion for Sanctions filed contemporaneously herewith, as is the transcript of the hearing conducted by Judge Pat McDowell on December 18, 1999, on Plaintiff's Motion to recuse in that case.

2. Judge Gohmert spent time during the hearing on December 4, 1998, trying to help the Plaintiff understand the law and the requirements or burden on the plaintiff to avoid summary judgement being granted for the defendant in that case. Judge Gohmert tried to explain to the Plaintiff the changes in the Texas Deceptive Trade Practices Act that occurred in 1995, as well as attempting to draw from the Plaintiff any information regarding evidence on the required elements that would allow him to get to a jury. However, Judge Gohmert did take issue with the Plaintiff's

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statement in his rambling pleading in that case wherein Plaintiff stated, "I know the outcome of my litigation against lawyers. I finally understand that *the judges in my litigation* will never allow me to present the truth about these lawyers to a jury." (Transcript of December 4, 1999, Summary Judgement hearing @ p.34)

3. Unfortunately, Plaintiff could not even remember what his allegations in the pleading were as he said in that hearing, "Perhaps I need to read that – what that's about. I hope I didn't just jump out of the clear blue and mention that." To which Judge Gohmert replied, "Well, actually, that kind of looks like what it is. That you were rolling along responding, and then you back-tracked and went into the fact..." (December 4, 1999 transcript @ p.37) Judge Gohmert went on to touch on other tragic matters the Plaintiff alleged had occurred in his life over the last 30-40 years and stated, "So that all looks irrelevant in this case. So my point on that is, unless it's relevant in this case, *even though you have my personal sympathy – and I can't think of anything worse than what you have experienced in that regard*, that won't have anything to do with my ruling in this case." (Transcript of December 4, 1999, Summary Judgement hearing @ p.38-39)

4. This Defendant really does not wish to bore the Court with minutia, but feels that this Court does need to get the gist of the dealing that the defendant court had with this Plaintiff. Judge Gohmert's comments in the Summary Judgement hearing apparently spurred the Plaintiff to file a motion to recuse Judge Gohmert from ruling on the motion for summary judgement because the court was allegedly prejudiced against the Plaintiff. That led to the above referenced hearing conducted by the presiding regional Judge Pat McDowell through which Judge McDowell found no basis in law or in fact to recuse Judge Gohmert from the case. In the hearing on Plaintiff's Motion to Recuse Judge Gohmert in that case, Plaintiff repeatedly misrepresented Judge Gohmert's remarks and questions; however, the 7th District Court for the State of Texas is a "court of record" which record, not Plaintiff's misrepresentations, formed the basis for Judge McDowell's ruling. As Judge McDowell stated to Plaintiff, "Candidly, he appeared to be trying to help you a little bit along the way to bring some tough stuff out, that I would have – if I'd been a lawyer on the other side, I would have been bothered by some, except that's Judge Gohmert. I think he wants to make sure – or try to make sure that both sides do get a fair hearing. That's my take..." (Transcript of December 18, 1999, Recusal hearing @ p.24) Why Judge McDowell is not now a defendant in this new federal case as a co-conspirator because of such ruling, is a mystery, though to include him too would have been another grievous wrong. A transcript of that hearing is attached for this Court's use.

5. Plaintiff said at the end of the hearing on December 4, 1998, before Judge Gohmert that he would not like it if the court ruled against him, but he would accept it, "... and would file an appeal, and see if I could get an appeals court to let me. That's all I would know to do, unless you've got – unless there's other – and I appreciate your help." At least at that point, the Plaintiff had it right. However, after thinking about it further, he decided an appeal was not the route to take. No. He would file a lawsuit in Dallas federal court, gratuitously include Judge Gohmert's name and cause as much inconvenience and expense as possible. That, he has done.

6. Through it all, Judge Gohmert has **absolute immunity** for the only dealings he has had involving this Plaintiff and the Plaintiff has given not even a hint of any facts that would support

a suit against this Defendant. If the Plaintiff ever were to get around to alleging any facts on which his inclusion of Judge Gohmert in his suit were based, it could only be because Judge Gohmert granted a summary judgement against the Plaintiff as he believed, and still does, that the law required him to do. This Defendant believes further that had Plaintiff chosen the appropriate route to test Judge Gohmert's ruling through **appeal**, the appellate courts would have advised him likewise. Of course, that would have subjected those appellate judges to being named in this suit also, so, perhaps, it is just as well that he did not appeal.

7. Pleading further, Plaintiff, though acting pro se, obviously has access to appropriate legal resources, yet even with such access and knowledge, he chose to sue this Defendant who has *judicial immunity* for any act or omission Plaintiff might allege, although no act or omission is actually alleged against this defendant. Accordingly, plaintiff is making an obvious effort to sue and harass the Defendant and waste court time, personnel time, and state and county resources as a matter of revenge because of an adverse ruling by this Defendant as a district judge in and for the state of Texas. Through Plaintiff's allegations, or lack thereof, he **fails to state a claim upon which relief can be granted**, and, accordingly, his cause against this Defendant should be dismissed with prejudice and with sanctions.

MOTION TO TRANSFER VENUE

8. Judge Gohmert is a resident of Smith County, Texas, is a state district judge whose district encompasses only Smith County, and whose only exposure to this Plaintiff occurred in Smith County, Texas, which county lies deep in the heart of the federal Eastern District of Texas. As such, for the convenience of the parties, and because any acts or omissions of which Plaintiff could conceivably complain against this Defendant occurred in the Eastern District of Texas. This cause should, therefore, under 28 USC Section 1404, be dismissed; or in the alternative, transferred to the United States District Court sitting in and for the Eastern District of Texas, Tyler Division.

IN THE ALTERNATIVE, IF SUCH BE NECESSARY, ORIGINAL ANSWER

General Denial

9. Defendant hereby denies all and singular the allegations of the Plaintiff and further takes great umbrage at Plaintiff's abuse of a respectable judicial system to harass officials attempting to do their jobs in their official capacity.

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WHEREFORE, PREMISES CONSIDERED, Louis B. Gohmert, Jr. respectfully prays that this honorable Court dismiss Plaintiff's cause of action and sanction him for such a frivolous and baseless lawsuit and that Plaintiff go forth without day, or, in the alternative, transfer this cause to the Eastern District of Texas, Tyler Division, but, in any event, abate discovery until a ruling can be obtained on Defendant's motions herein.

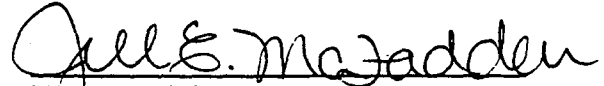
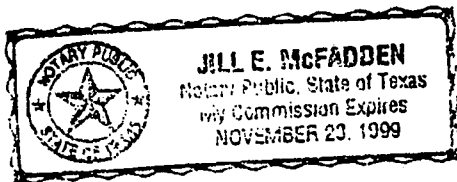
Respectfully submitted,



Louis B. Gohmert, Jr.
Judge, 7th District Court
Smith County Courthouse
Tyler, Texas 75702
Pro se Defendant (903/535-0625)


Oath

On this the 3rd day of May, 1999, appeared before me the aforesaid Louis B. Gohmert, Jr. and swore that to the best of his knowledge and belief, the statements contained therein are true and correct.


Notary Public

Certificate of Service

A copy of the above pleading is being sent by U.S. Mail to Plaintiff and to other Defendants attorney at the address provided in their pleading on this the 3rd day of May, 1999.


Louis B. Gohmert, Jr.

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