

Writ Coram Vobis

08-MC-0066 – federal evidence repository
Chief Judge Wiley Young DANIEL.

ROBERT C. "BOB" BALINK
03/19/2010 02:32:06 PM
Doc \$0.00 Page
Rec \$21.00 1 of 4

El Paso County, CO



FILED
210025595
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Comes now David Merrill special appearance Rule E(8) refusing for cause
Recommendation from Magistrate MIX formed March 15th, 2010.

MAR 24 2010

GREGORY C. LANGHAM
CLERK

Attached and fully incorporated are certified copies of the abatement for misnomer – El Paso county Reception #204106568 and the default judgment #204116554 from the criminal case file by which the tort against me occurred.

Kirk Stewart SAMELSON and John William SUTHERS have breached their oath of office by intentionally deferring a prosecution, against my knowledge for over four years during which time they could have, as you see on the abatement, have phoned me (cell phone 24/7 charged by my bed) upon my promise to report to the jail should there have been any warrant issued on the original abated charge. In bad faith, these two actors led my family and I to believe that since the abatement and judgment are indexed publicly as JUDGMENT (Internet search or (719) 520-6200 on the judgment # above) and because any law dictionary describes misnomer to be fatal and ground for abatement on pleadings, that this cause was properly abated.

MISNOMER. The use of a wrong name ...

In a pleading, a misnomer of a party is ground of abatement, while misnomer of a third person...

Cyclopedic Law Dictionary Third Edition.

Magistrate MIX has issued a contradictory Recommendation to Judge Robert Edward BLACKBURN. In her second sentence she expresses quite clearly that she understands the nature of my petition:

In the Petition, Plaintiff seeks an "appropriate writ of enforcement on [his]\$20M lien" and requests that the Court "issue an Order for the State of Colorado Capital Finance Corporation to deposit \$20,000,000.00 in funds" into his bank account.

Yet she goes on to say that my complaint is nearly unintelligible! That is because I have no complaint except, as MIX understands, that I have billed the state because of malfeasant actions and breach of contract (oaths of office) and they are over a year late in

paying me. Any confusion is from the clerk of court presenting my evidence repository to Judge BLACKBURN like it is a civil action.

I have ordered the billing process sent from the Secretary of State but it may have arrived without a case number. The bill and past due notice is in the evidence repository but if the Court would like to view a fresh copy pull up the SoS website, click on the Business tab under Divisions and find the Forms List/Certified Order Form tab on the right. For only \$2 cash you can place your order for Reception #20092001574 and receive it within about five days by mail. I am enclosing the \$2 for you to do so with this writ of error.

I have served a Notice to the Court stipulating arrangements for me to get to trial in the US courthouse as MIX was ordered to schedule one. I voiced my skepticism about the clerk's re-designating my habeas corpus to be a civil suit. I may not have made it clear enough for Magistrate MIX.

The action of lien is founded in waiver of tort. That means I have waived my right to a trial or judicial proceedings. The bill, past due notice and subsequent lien are based in the facts found in this evidence repository.

Waiver of Tort

The election, by an injured party, for purposes of redress, to treat the facts as establishing an implied contract, which he may enforce, instead of an injury by fraud or wrong, for the committing of which he may demand damages, compensatory or exemplary. *Harway v. Mayor, etc., of City of New York*, 1 Hun (N.Y.) 630

From Black's Law Dictionary Fourth Edition.

All the facts are in the evidence repository. The transcripts of the billing process in the courtroom proceedings in late 2008 were included with the Notice to the Court filed into this same Case # on January 13th, 2010. Falsification of the court record is proven by the adjacent Registers of Action filed with receipts on January 8th, 2009. The finance statement was published on January 7, 2009 and within hours Kirk Stewart SAMELSON altered his oath to exclude any mention of God, as if that would void the 1864 trust agreement on the currency – IN GOD WE TRUST. *Too little, too late.*

For this matter to be before BLACKBURN and MIX as a civil trial is error on the clerk's part. The clerk is to revert all documents back to the simpler evidence repository in 08-CV-0066 and then send the entire case to chief judge Wiley Young DANIEL as this is now a Writ of Error *coram vobis*. It involves a foreign judgment cited in the first paragraph.

As far as objections go. I have only one, considering this whole civil trial business is in error. Magistrate MIX makes allusions that I may have prejudiced any right to form a federal grand jury or state grand jury. I retain all my rights to peaceable remedy through

the court systems in America. It is clear that she understands my complaint – this is simply an unpaid bill.

Fides servanda est; simplicitas juris gentium praevaleat. Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. 3 Burrows, 1672; Story, Bills, Section 15.

From Black's Law Dictionary Fourth Edition.

My right to the law and all its judicial facets as formed in plain English protected by the 'saving to suitors' clause of 1789:

"...the United States, ... within their respective districts, as well as upon the high seas; (a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land,..." The First Judiciary Act; September 24, 1789; Chapter 20, page 77. The Constitution of the United States of America, Revised and Annotated - Analysis and Interpretation - 1982; Article III, §2, Cl. 1 Diversity of Citizenship, U.S. Government Printing Office document 99-16, p. 741.



Other Orders/Judgments

1:09-cv-03001-REB-KLM Merrill v. No Respondents Named

ALLMTN

U.S. District Court

District of Colorado

Notice of Electronic Filing

The following transaction was entered on 3/16/2010 at 11:47 AM MDT and filed on 3/15/2010

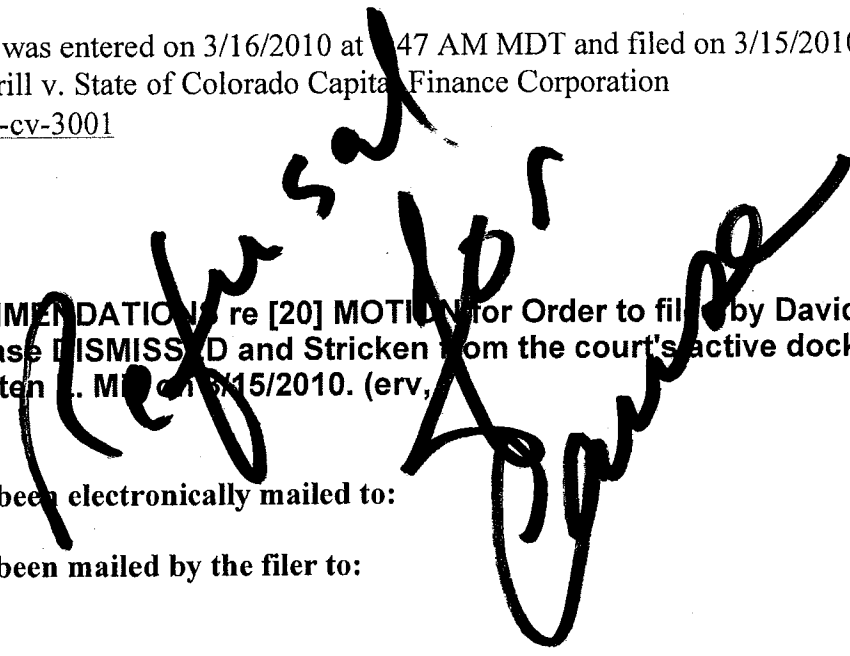
Case Name: Merrill v. State of Colorado Capital Finance Corporation

Case Number: 1:09-cv-3001

Filer:

Document Number: 26

Docket Text:

REPORT AND RECOMMENDATION re [20] MOTION for Order to file by David Merrill, be DENIED and this case DISMISSED and Stricken from the court's active docket by Magistrate Judge Kristen L. Miller on 3/15/2010. (erv, )

1:09-cv-3001 Notice has been electronically mailed to:

1:09-cv-3001 Notice has been mailed by the filer to:

David Merrill
115 East Vermijo
#202
Colorado Springs, CO 80903

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1071006659 [Date=3/16/2010] [FileNumber=2392512-0
] [6c97ff9f008282f8b1add49be556fb856624160c3d24897974ce00ff974599a661b
83ce978219064ef9938b0db88a968bdc29942c032aacb70b3ff9042925ebf]]