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DISTRICT OF UTAH
BY:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

WILLIAM H. PAYNE AND ARTHUR MORALES, Petitioners, vs. KATHLEEN JO GIBSON, Clerk of New Mexico Supreme Court, PAMELA B. MINZER, Judge of New Mexico Supreme Court, et al. Respondents.	**MEMORANDUM OPINION AND ORDER** Case No. 2:03CV00288 DB consolidated with: Case No. 2:03CV00228 TS

I. INTRODUCTION

The above captioned case is before this Court pursuant to an Order issued by New Mexico Federal District Judge James Parker. In that Order, Judge Parker recused all judicial officers in the District of New Mexico from cases involving the pro se petitioner in this case, and transferred the case to the United States District Court for the District of Utah before the Honorable Dee Benson, Chief United States District Court Judge for the District of Utah.[1] Since

[1] This transfer order included several other cases wherein petitioner and Arthur Morales had sued various judicial officers and others. These include case no. CIV-01-1132 naming respondents, Phyllis A. Dow, William F. Downes, Rodey, Dickason, Sloan, Akin & Robb, P.A.,

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that time, the petitioner herein filed, in conjunction with another pro se petitioner, Arthur R. Morales, a similar suit now before the Honorable Ted Stewart, United States District Court Judge for the District of Utah. That case is captioned, Arthur R. Morales and William H. Payne, pro se, v. Kathleen Jo Gibson, Clerk of New Mexico Supreme Court, Petra Jimenez Maes, Chief Justice of New Mexico Supreme Court, case no. 2:03CV0228 TS. Case no. 2:03CV0228 TS was consolidated into the above captioned case.

Before the Court is respondents' motion to dismiss petitioners' case. Docket no. 5 of the former case no. 2:03CV00228 TS now consolidated into case no. 2:03CV00288 DB, and docket no. 2 of case no. 2:03CV00288, which in all material aspects are the same. In these motions respondents argue that petitioners' case should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Civil Procedure 4(j). The Court applies its decision with regard to these motions filed by respondents Gibson, Maes, and Minzer, et al. to all named respondents in all cases brought by petitioners Arthur R. Morales and William H. Payne that have been transferred to this Court and are now pending before it, with the exception of respondent Federal District Court Judge William Downes. With regard to respondent Judge Downes, before the Court is his motion to dismiss based on judicial immunity as a bar to this action. The Court will address the motions in turn.

CIV 00-1574, Morales and Payne v. United States of America, et al., CIV 00-1677, Payne v. Sandia Corporation, and CIV 01-634, Morales and Payne v. Baca, and CIV 01-1198, Morales and Payne v. John W. Zavitz, William F. Downes, and French & Associates.

II. RESPONDENTS GIBSON'S, MAES', and MINZER'S MOTION TO DISMISS

A. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) allows a district court to dismiss complaints which fail to "state a claim upon which relief can be granted." Such dismissal is warranted when, even if all of the allegations in the complaint are true, the petitioner is not entitled to any legal relief as a matter of law. In other words, the petitioner cannot prove any set of facts in support of his claim. In applying this standard the Court shall presume all the factual allegations in the complaint to be true and shall draw all reasonable inferences therefrom in the light most favorable to the petitioner. *See Usher v. City of Los Angeles,* 828 F.2d 556, 561 (9th Cir. 1987).

In this case, respondents argue, petitioners improperly seek to have this Court review the judicial proceedings of a New Mexico state court adjudication to determine the constitutionality of the state court's actions. The Court agrees with respondents.

Petitioners seek to have this Court declare the state court's actions unconstitutional and remand their case for trial, and to overturn the state court's finding that petitioners are vexatious litigants and an order barring them from filing any lawsuits in the New Mexico Courts without a lawyer. Where, as here, it is clear that a petitioner's constitutional claims are "inextricably intertwined with the state court's denial in a judicial proceeding of a particular petitioner's, then the District Court is in essence being called upon to review the state court's decision." *Dist. Of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 483-84 n. 16 (1983). In such a case, a United States District Court has no authority to review final judgments of a state court in judicial proceedings. Id. at 476. Therefore, even if all of the facts as alleged are true, petitioners fail to

state a claim for which relief can be granted. Accordingly, petitioners' claims against all respondents, except respondent Judge Downes, are DISMISSED pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which this Court can grant relief.[2]

III. Respondent DOWNES' MOTION TO DISMISS

A. Absolute Judicial Immunity

Petitioners seek money damages from United States District Judge Downes in his individual capacity. Their claims for relief are based on Judge Downes' judicial rulings in cases removed to federal court from New Mexico state courts. Before Judge Downes, petitioners argued that the New Mexico state cases were improperly removed to federal court, and if they were not remanded a violation of the Anti-Injunction Statute (28 U.S.C. § 2283) would result. Judge Downes disagreed and ruled against the petitioners. This led to petitioners suing Judge Downes in New Mexico state court. Respondent Downes argues that based on these facts the lawsuit against him should be dismissed as a matter of law because he is entitled to absolute judicial immunity from suit and damages. The Court agrees.

To be entitled to absolute judicial immunity respondent must show: 1) that the challenged act is judicial in nature and 2) that it was not done in the absence of jurisdiction. *See Mireles v.*

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[2] Petitioners have not properly served respondents in this case, thereby, providing an additional basis for the dismissal of their case. Fed. R. Civ. P. 4(j) requires that petitioners serve either the governor or follow the state's law on service of summons, which requires that when, as here, an action is against a state official, the official and the Attorney General must be served. Petitioners failed to do so. Therefore, in addition for failing to state a claim upon which relief can be granted, petitioners have failed to effect service of process rendering their petition invalid. The Court finds this to be an additional basis to grant respondents motion to dismiss this action.

Waco, 502 U.S. 9, 11-12 (1991). A judge's action is judicial in nature if "it is a function normally performed by a judge ... in his judicial capacity." *Stump v. Sparkman,* 435 U.S. 349, 362 (1978). An allegation of corrupt motive, malice or mistake associated with a judge's action is irrelevant if the act is within his judicial powers. *See e.g., Forrester v. White,* 484 U.S. 219 (1988). The Court finds that all of the actions complained of here were either done as written judicial orders, or in open court as pronouncements from the bench. Therefore, respondent has shown that his actions were judicial in nature.

The Court has found that respondent's actions were judicial in nature and now must determine whether respondent was wholly without jurisdiction to act. "Jurisdiction is construed broadly where the issue is the immunity of the judge." *Crooks v. Maynard,* 913 F.2d 699, 701 (9th Cir. 1990). "A clear absence of all jurisdiction means a clear lack of all subject matter jurisdiction." *Mullis v. U.S. Bankruptcy Court for the District of Nevada,* 828 F.2d 1385, 1389 (9th Cir. 1987). In this case petitioners argue Judge Downes presided over a case that was improperly removed, which he refused to remand, and that this violated 28 U.S.C. § 2283. This argument is without merit and frivolous. Respondent has clearly shown he was acting with colorable jurisdiction and conducted proceedings of a judicial nature, and, therefore, he is entitled to absolute judicial immunity. *Christensen v. Ward,* 916 F.2d 1462, 1478 (10th Cir. 1990). Accordingly, petitioners' claims against respondent Judge Downes are DISMISSED with prejudice.

IV. CONCLUSION

For the reasons stated above and those in respondents' respective briefs, the Court

DISMISSES petitioners' William Payne and Arthur R. Morales claims and their case with prejudice. IT IS SO ORDERED.

DATED this 20th day of January, 2004.

Dee Benson
United States District Court Judge

kvs

United States District Court
for the
District of Utah
January 22, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00228

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