

IN THE STATE OF MISSOURI
JACKSON COUNTY SIXTEENTH CIRCUIT COURT
AT INDEPENDENCE

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 0916-CV38273
)	Division 15
CHAPEL RIDGE MULTIFAMILY LLC, <i>et al.</i> ,)	
)	
Defendants.)	

FILED-CIRCUIT COURT
JACKSON CO., MO-1
2010 MAY 28 PM 3:57

**PLAINTIFF'S APPLICATION FOR CHANGE OF VENUE
FROM INHABITANTS FOR CAUSE UNDER MISSOURI CIVIL PROCEDURE RULE 51.04**

COMES NOW Plaintiff Samuel K. Lipari appearing *pro se* and makes the following Application For Change of Venue From Inhabitants for Cause under Missouri Civil Procedure Rule 51.04 to remove the present action from the 16th Circuit and the Western District of Missouri Appellate District for cause. The plaintiff respectfully requests the court grant the Motion for change of venue for the following reasons:

INTRODUCTION

The inhabitants of Jackson County, Missouri and the Western District of Missouri have repeatedly demonstrated a strong prejudice against the plaintiff in their exercise of ministerial duties as non judge employees of the 16th Circuit Court and Western District of Missouri Appellate District Court and as public officials with governmental units within Jackson County that are not parties and without a legal interest in this present action. The inhabitants have therefore demonstrated an insurmountable prejudice in the deviation of rules, the lack of observance or enforcement of Missouri Supreme Rules including attorney ethics and in the violation of even Missouri criminal statutes which has not discontinued even with repeated notices to those same officials within Jackson County governmental offices who represent the inhabitants of Jackson County in the implementation of policy and conduct against the plaintiff, threatening injury to his procedural and substantive Due Process rights guaranteed under the Constitution of the State of Missouri. Whereas for the following reasons the plaintiff respectfully requests that this court automatically grant his request for a change of Venue From Inhabitants for Cause under Missouri Civil Procedure Rule 51.04.

I. STATEMENT OF FACTS

The plaintiff gives notice of the following conduct in cases before the 16th Circuit and the Western District of Missouri Appellate District which gives evidence of the prejudice of the inhabitants of Jackson County, Missouri and provide a present danger that the plaintiff's Procedural and Substantive Due Process rights under the Missouri Constitution are at risk:

0916-CV29828 - *WACHOVIA DEALER SERVICES INC v. SAMUEL K LIPARI*

1. An underlying case 0916-CV29828 - *WACHOVIA DEALER SERVICES INC v. SAMUEL K LIPARI* that is a subject of this action had a hearing on May 26th, 2010 where the 16th Circuit Judge the Hon. Robert L. Trout was 20 minutes late, appearing to have been receiving ex parte instructions from other persons before taking up the matter involving the plaintiff, WELLS FARGO, WACHOVIA DEALER SERVICES INC, TROPPITO & MILLER LLC, CHRIS M. TROPPITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER, in the present action.

2. The Hon. Judge Robert L. Trout appeared to participate in a pre-planned exercise with his clerk and the Missouri licensed attorney TONY R. MILLER that had TONY R. MILLER reaching into the court file and removing the plaintiff's exhibits in the plaintiff's answer to the petition of WACHOVIA DEALER SERVICES INC. brought by TROPPITO & MILLER LLC.

3. The plaintiff's exhibits in the plaintiff's answer were evidence of fraudulent statements to the court made by the Missouri licensed attorneys TONY R. MILLER, CHRIS M. TROPPITO, and NICHOLAS L. ACKERMAN to procure the business property of the plaintiff through fraud in violation of statutory notice requirements.

4. The hearing on May 26th was scheduled on March 24, 2010 when the 16th Circuit Judge the Hon. Robert L. Trout repeatedly tried without success to have the plaintiff voluntarily withdraw his answer to the petition of WACHOVIA DEALER SERVICES INC. detailing the frauds and statutory violations of TROPPITO & MILLER LLC, CHRIS M. TROPPITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER in their petition and representations to the court on behalf of WACHOVIA DEALER SERVICES INC.

5. The initial hearing took place before the Hon. Judge Robert L. Trout on Dec. 16, 2009 when a similar 20

minute delayed appearance of Hon. Judge Robert L. Trout gave the appearance Hon. Judge Robert L. Trout had been surprised and confused by ex parte instructions from other persons before taking up the matter involving the plaintiff, WELLS FARGO, WACHOVIA DEALER SERVICES INC, TROPBITO & MILLER LLC, CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER.

6. During the Dec. 16, 2009 hearing, Hon. Judge Robert L. Trout appeared unfamiliar with the plaintiff's filed answer and had the plaintiff explain the exhibits showing the fraud on the court of TROPBITO & MILLER LLC, CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER in their attempt to procure a judgment through fraud to convert the plaintiff's business property in violation of statutory notice requirements.

7. The frauds on the 16th Circuit Court by TROPBITO & MILLER LLC, CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER as agents on behalf WELLS FARGO and WACHOVIA DEALER SERVICES INC are detailed at in the plaintiff's petition in the present action and in the plaintiff's amended petition.

8. The plaintiff believes he is under a present and likely threat to his rights to Procedural and Substantive Due Process resulting from persons exercising ex parte influence over 16th Circuit Court personnel for the purpose of corruptly obtaining an outcome in underlying case 0916-CV29828 - *WACHOVIA DEALER SERVICES INC v SAMUEL K LIPARI* for the purpose of obstructing justice in the present action.

9. The present petition and amended petition alleges with supporting averments of fact that the Western District of Missouri Office of the U.S. Department of Justice through Assistant US Attorneys and members of the Federal Bureau of Investigation put the latecomer RICO conspiracy defendants up to the charged RICO predicate acts against the plaintiff as part of an under Color of Official Right extortion scheme to prevent the plaintiff from competing in the state and national markets for hospital supplies.

10. The plaintiff witnessed the same suspicious 20 minute delay with Western District US Bankruptcy Hon. Judge Jerry W. Venters in *In Re: Dustin R. Sherwood and Jennifer Sherwood, Debtors*, No. 07-50584-JWV11 , whose staff was confused and embarrassed by the unplanned delay and then the entry of Hon. Judge Jerry W. Venters who appeared to have been receiving ex parte instructions from other persons before taking up the matter involving the plaintiff's witnesses Dustin and Jennifer Sherwood of Edgerton, Missouri.

11. The controversy over the unusual conduct of the Missouri creditor law firms and the court in the Dustin Sherwood Case which originated in the 7th Judicial Circuit of Clay County Missouri through the misconduct of Missouri attorneys Joel Pelofsky and Janice Stanton (the 7th Judicial Circuit is also in the Western District Court of Appeals). See

www.themilkweed.com/MW%20Aug-Sep%2008%20Sherwood%20Story.pdf

and www.themilkweed.com/Sherwood_Update_08_Dec.pdf

12. The hearing witnessed by the plaintiff appears to have cast the die for the plaintiff's racketeering conduct witness Dustin Sherwood to be renditioned to a secret pretrial imprisonment and for the plaintiff's racketeering conduct witness Jennifer Sherwood to be threatened with imprisonment during the life of her adolescent children by the Western District of Missouri Office of the U.S. Department of Justice to extort Dustin Sherwood's confession to a non-crime.

13. The current Western District of Missouri Office of the U.S. Department of Justice chief policy-making official US Attorney Beth Phillips is the wife of a 16th Circuit Missouri State Court judge.

0916-CV-22818 - CHAPEL RIDGE MULTIFAMILY LLC v SAMUEL LIPARI

14. The plaintiff's petition and amended petition in the present action detail how extrinsic fraud on the 16th Circuit Court by the defendants SWANSON MIDGLEY LLC, and Missouri licensed attorneys CHRISTOPHER BARHORST, and HOLLY L. FISHER on behalf of CHAPEL RIDGE MULTIFAMILY LLC resulted in 16th Circuit Court Judge Hon. Charles L. Stitt being deceived by a false affidavit and document created by the Missouri licensed attorneys CHRISTOPHER BARHORST. See Amended Petition pgs. 20-23.

15. The plaintiff's petition also details how 16th Circuit Court removed the plaintiff's notice of the fraud filed into the proceeding and how even when the notice was again file stamped and placed in the record, 16th Circuit Court Judge Hon. Charles L. Stitt willingly participated in CHRISTOPHER BARHORST, and HOLLY L. FISHER's crime on behalf of CHAPEL RIDGE MULTIFAMILY LLC (the 16th Circuit's own sample unlawful detainer form cautions a false affidavit to mislead a public official to obtain an eviction is a Class A Misdemeanor, see <http://www.16thcircuit.org/Forms/CVL/Landlord.pdf>) and subsequently granted a garnishment obtained through the fraud. See Amended Petition pgs. 21-22.

16. The plaintiff has no knowledge that any disciplinary proceedings have been initiated against 16th

Circuit Court Judge Hon. Charles L. Stitt and Hon. Judge Charles L. Stitt still appears to be a sitting judge on the 16th Circuit Court

17. The current favored way by members of the Kansas City Metropolitan Bar Association ("KCMBA") for concealing public corruption in state courts is to remove evidentiary documents from the court record extrajudicially with the belief that the lack of a motion, pleading or oral request on the record can purge the legal file of incriminating evidence that would expose judicial misconduct in furtherance of the corruption in appellate review.

0616-CV-07421 SAMUEL K. LIPARI v. GENERAL ELECTRIC COMPANY, et al.

18. In an earlier styled proceeding in the current matter or controversy, the 16th Circuit Court appears to have taken action against now Senior Presiding Judge Hon. Stephen W. Nixon for following the controlling law and denying the present defendants GENERAL ELECTRIC COMPANY, GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION AND GE TRANSPORTATION SYSTEM'S GLOBAL SIGNALING, LLC'S Motion to Dismiss filed May 4, 2006.

19. After Senior Presiding Judge Hon. Stephen W. Nixon on 05/31/2006 ruled consistently with the federal Electronic Signatures in Global and National Commerce Act, widely known as "E- SIGN" 15 USC §7001, and denied the GENERAL ELECTRIC defendants' un-researched motion to dismiss on grounds conforming to how other Missouri courts have subsequently ruled on email created contracts, the 16th Circuit Court replaced Senior Presiding Judge Hon. Stephen W. Nixon with Hon. Judge Michael W. Manners.

0916-CV-38273 SAMUEL K. LIPARI v. CHAPEL RIDGE MULTIFAMILY LLC, et al.

20. In the present case 0916-CV38273, the plaintiff attended two hearings April 2nd and 4th 2010 which were on the official 16th Circuit Court appearance docket and appeared electronically online at Missouri Case Net but where the defendants did not attend and 16th Circuit Court judge presiding over the action, Hon. Judge Robert Schieber were absent.

21. One 16th Circuit Court hearing April 4th 2010 was actually a hearing rescheduled by Hon. Judge Robert Schieber himself.

22. During the last hearing that the plaintiff alone attended, the 16th Circuit Court clerk Mr. Elliott Nickell for Hon. Judge Robert Schieber answered the plaintiff's question about how the defendants all knew the hearing had been canceled but the plaintiff had not been given notice and neither the 16th Circuit Court docket had the hearings canceled or the online version of the appearance docket reflected any cancelations, the 16th Circuit Court clerk for Hon. Judge Robert Schieber conceded there had been ex parte communications.

23. When all parties attended the next scheduled hearing April 8th 2010 through their retained legal counsel (approximately 10 attorneys), the 16th Circuit Court Judge Hon. Robert Schieber stated he was required to recuse himself because of a conflict resulting from a Mandamus action brought by an attorney for one of the defendants.

24. The hearing was cancelled and the plaintiff went home to research the case referred to by the 16th Circuit Court Judge Hon. Robert Schieber and discovered any active case had been concluded over a year prior, giving the appearance that the reason given by the 16th Circuit Court Judge Hon. Robert Schieber was false.

25. From the filing of the present action, the 16th Circuit Court has avoided making any rulings over numerous motions and even requests for extensions brought by all parties in the action except conspicuously granting an extension for the GENERAL ELECTRIC COMPANY defendants on March 3, 2010.

26. The result of the 16th Circuit Court's inactivity has been to embolden the defendants' Novation LLC cartel with openly committing additional RICO predicate acts and crimes against the plaintiff, the plaintiff's family and associates to obstruct justice in the present action.

27. The plaintiff was forced to write letters to government offices in Jackson County to attempt to stop state entities like the Blue Springs School District and the City of Blue Springs from participating in the defendants' RICO conspiracy through for misconduct under Color of Official Right via threats of economic harm described in *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir. 2006) and through the Coercive Nature of Official Office described in *U.S. v. Antico*, 275 F.3d 245 at 256 (3rd Cir., 2001) to obstruct justice in the present action.

28. When the defendants' Novation LLC cartel continued to have the plaintiff's nephew and sister targeted

even though they are not involved in the plaintiff's Medical Supply Chain or Medical Supply Line businesses, the plaintiff was forced to write a letter to the 16th Circuit Court Judge Hon. Robert Schieber. See exhibit 1 attached April 1, 2010 letter.

29. The 16th Circuit Court has continued to fail to make rulings over numerous motions mounting in this action or set a case management conference, forcing the plaintiff to write letters seeking relief from extortion by governmental entities within Jackson County and their officials including the City of Blue Springs from continued predicate RICO acts and deprivations of constitutional rights against the plaintiff, his family and associates to obstruct justice in the present action. See exhibit 2 attached May 22, 2010 letter.

30. The 16th Circuit Court has continued to fail to make rulings over numerous motions mounting in this action or set a case management conference, forcing the plaintiff to write letters seeking relief from extortion by governmental entities within Jackson County and their officials including the City of Blue Springs from continued predicate RICO acts and deprivations of constitutional rights against the plaintiff, his family and associates to obstruct justice in the present action. See exhibit 2 attached May 25th, 2010 letters sent to City of Blue Springs councilmen.

31. The 16th Circuit Court Independence Annex Court Clerk's office has repeatedly delayed service of process on defendants in this action even though the plaintiff provided copies of the appropriate petitions and paid the service fees.

32. When weeks went by without process being issued or serve, the plaintiff visited and telephoned the 16th Circuit Court Independence Annex Court Clerk's office only to be repeatedly told that the case file was "in chambers" even when no judge was assigned to this action after 16th Circuit Court Judge Hon. Robert Schieber recused himself.

0816-CV-04217 SAMUEL K. LIPARI v. NOVATION LLC, et al.

32. The Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis fraudulently concealed the lack of jurisdiction of the Western District of Missouri trial court to unlawfully remove the petitioner's claims in the concurrent Missouri State Court Case *Lipari v General Electric et al.*, Case No. 0616-CV32307.

33. The Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis through Mark A. Olthoff (Mo. Lic. # 38572) omitted notice to Ms. Patricia L. Brune the Clerk for the U.S. District Court for the Western District of Missouri in Olthoff's Notice of Removal dated 12/13/2006 that the petitioner's claims were already under federal jurisdiction in the first filed in *MSC v. Neoforma, Inc. et al* Kansas District Court Case No. 05-CV-2299-CM whose trial judge Hon. Judge Carlos Murguia had dismissed without prejudice.

34. At the time of removal of *Lipari v General Electric et al.*, 16th Circuit Case No. 0616-CV32307 to the Western District of Missouri, the same claims in the same case or controversy Kansas District Court Case No. 05-CV-2299-CM were in an appeal in Tenth Circuit Case No. 06-3331 initiated on September 8, 2006 which had exclusive federal jurisdiction.

35. The petitioner in a letter notified the Clerk of the Court of her error resulting from Mark A. Olthoff's (Mo. Lic. # 38572) facial misrepresentation of the existence of federal jurisdiction but no action was taken by the Western District Court Clerk.

36. At the time of removal there was no federal diversity jurisdiction over the concurrent Missouri State Court *Lipari v General Electric et al.*, 16th Circuit Case No. 0616-CV32307 because the same case or controversy Kansas District Court case no. 05-CV-2299-CM which was on appeal as Tenth Circuit Case No. 06-3331 and (currently) again as Tenth Circuit Case No. 08-3187 both contained the defendant Shughart, Thompson & Kilroy (Polsinelli Shughart PC) domiciled in Missouri, the same state of residence as the petitioner.

37. The petitioner made a timely objection to removal and motion to remand raising the lack of federal diversity jurisdiction, the exclusive federal jurisdiction in *MSC v. Neoforma, Inc. et al*, Tenth Circuit Case No. 06-3331 and the violation of the federal "First to File Doctrine" against Kansas District Court Case No. 05-CV-2299-CM ; and Hon. Judge Fernando J. Gaitan, Jr.'s position on the board of directors of a defendant in the same case or controversy and the existence of an open motion for recusal.

38. The Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis through Mark A. Olthoff (Mo. Lic. # 38572) deliberately did not brief Hon. Judge Fernando J. Gaitan, Jr. on the applicability of these prohibitions to federal jurisdiction in the present underlying action W.D. of MO. Case No. 06-1012-W- FJG stating merely:

“Defendants, while denying that petitioner has any viable claims, admit that subject matter jurisdiction exists in this Court as alleged in their Notice of Removal. Otherwise, defendants deny the allegations in Paragraphs 1-5 of petitioner’s Complaint.”

Answer of US Bank and US Bancorp to Motion for Remand page 2 in ¶ 1.

39. On February 9, 2005 the Hon. Judge Nanette K. Laughrey of US District Court for the Western District of Missouri ruled an electronic signature and emails form an enforceable contract satisfying the Statute of Frauds under Missouri State law and 15 USC §7001 in a fact pattern materially the same as the petitioner had pled his contract based claims against US Bank and US Bancorp since the petitioner first initiated a litigation in 2002.

40. On August 8, 2006, the Missouri State Court of Appeals opinion of Hon. Robert G. Ulrich, Hon. Joseph M. Ellis, and Hon. Ronald R. Holliger in *Crestwood Shops, L.L.C. v. Hilkene*, No. WD 65694 (Mo. App. 8/8/2006) confirmed the US District court’s resolution in *Intern. Casings Group* of the Missouri Statute of Fraud’s application to contracts formed or modified through e-mail.

41. On January 19, 2007 the Jackson County Missouri based attorneys for the Novation LLC cartel Mark A. Olthoff (Mo. Lic. # 38572), Andrew M. DeMarea (Mo. Lic. #45217), and Jay E. Heidrick (Mo. Lic. # 54699) sought to escape a law based outcome on the petitioner contract based claims and filed a motion to transfer the action to Kansas District court while federal jurisdiction was exclusively in *MSC v. Neoforma, Inc. et al*, Tenth Circuit Case No. 06-3331 and again without addressing or briefing Hon. Judge Fernando J. Gaitan, Jr. on the lack of federal jurisdiction in his court.

42. On April 4, 2007 Hon. Judge Fernando J. Gaitan, Jr. declined to grant Olthoff, DeMarea, and Heidrick’s motions to dismiss or strike the petitioner’s claims but granted their motion to transfer them to Kansas District Court where the new action was styled *Lipari vs. US Bancorp, Inc. et al*. KS Dist. Court Case No.07-02146.

43. On December 10, 2007 The Tenth Circuit issued its mandate in *MSC v. Neoforma, Inc. et al*, Case No. 06-3331, returning federal jurisdiction over the underlying state contract claims of the petitioner to Kansas District Court case no. 05-CV-2299-CM.

44. At no time from 2007 Mark A. Olthoff’s (Mo. Lic. # 38572) Notice of Removal dated 12/13/2006 (which deceived Ms. Patricia L. Brune Clerk of the U.S. District Court for the Western District of Missouri over the existence of federal jurisdiction through omission of notice of the Kansas District Court and Tenth

Circuit ongoing litigation in the same case or controversy) until the order transferring the underlying action to the Kansas District Court on April 4, 2007 did Hon. Judge Fernando J. Gaitan, Jr. ever have lawful jurisdiction over the petitioner's concurrent Missouri state contract based claims which lacked diversity and were exclusively under the jurisdiction of the Tenth Circuit Court of Appeals in *MSC v. Neoforma, Inc. et al*, Case No. 06-3331 having been appealed from Kansas District Court case no. 05-CV-2299-CM on September 8, 2006.

45. The petitioner learned that the Jackson County, Missouri based Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis were continuing with a scheme to defraud the Kansas District Court Magistrate Judge Hon. David J. Waxse through a false and bad faith motion to compel production of discoverable documents signed by Jay E. Heidrick even though the documents had been repeatedly produced.

46. The copying cost to the petitioner for reproducing the discovery already served in order to defend against the defendants Polsinelli Shughart PC and Richard K. Davis's motion to compel was over \$5000.00.

47. The defendants Polsinelli Shughart PC and Richard K. Davis' scheme depended on no rulings being made by a cooperating or participating judge on the defendants Polsinelli Shughart PC and Richard K. Davis' frivolous and fraudulent "automatic" blanket protective orders under local Kansas District Court Rules.

48. The Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis' scheme also depended on a cooperating or participating judge fraudulently dismissing the petitioner's claims as a sanction.

49. The Hon. Judge Carlos Murguia refused to complete the judgment of sanction started by Magistrate Judge Hon. David J. Waxse that Polsinelli Shughart PC and Richard K. Davis had planned to obtain by fraud and did not throw out the petitioners' case.

50. When the petitioner successfully proved the fraud on the court by the agents of Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis, the Kansas District Court instead partially granted a second dismissal including all Missouri state law based contract claims in violation of the Federal Rules of Civil Procedure as a prohibited second Rule 12 motion to dismiss.

51. Instead of accomplishing dismissal through the defendants Polsinelli Shughart PC and Richard K. Davis,' fraud scheme, the Kansas District Court impugned the e-mail based contract decisions of Hon. Judge Nanette K. Laughrey of the US District Court for the Western District of Missouri and the Missouri State Court of Appeals opinion of Justices Hon. Robert G. Ulrich, Hon. Joseph M. Ellis, and Hon. Ronald R. Holliger as violating the “ plausibility ” standard of *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007) and failing to state a claim for contract under Missouri state law.

52. The Novation LLC cartel defendants and the Kansas District Court having been given notice of controlling law contradicting the lawfulness of the dismissal of all Missouri state law contract based claims under the Federal Rules of Civil Procedure, the express language of E-Sign Act, resulting interpretations of the act as it applies to materially identical fact situations in Missouri courts and the resulting inappropriateness of the “plausibility” based dismissal sought to keep a matter or controversy alive in the Kansas District Court solely for the bad faith purpose of avoiding review.

53. The petitioner then filed in the US District Court for the Western District of Missouri at Kansas City, Missouri a timely second amended Notice of Appeal designating the voluntary dismissal with prejudice of the remaining Kansas District Court claims.

54. The Western District court did not file the Second Amended Notice of Appeal or forward it to the Eighth Circuit. See Docket Notation of Assistant Western District Clerk Lori Carr stating “chambers” had instructed her to send it to Kansas District Court:

“***Remark: Petitioner's Second Amended Notice of Appeal was received by this court and then forwarded this date to the District of Kansas for processing at the instruction of chambers. (Carr, Lori) (Entered: 12/05/2008)”

Appearance Docket of W.D. of Missouri Case No. 4:06-cv-01012-FJG

55. On December 9, 2008 the Chief Clerk of the Eighth Circuit wrote a letter to the Kansas City, Missouri Clerk Ms. Patricia L. Brune instructing her to file the Second Amended Notice of Appeal in her court, the U.S. District Court for the Western District of Missouri.

56. Ms. Patricia L. Brune never complied with the order.

57. In Kansas District Court to manufacture a basis for continuing trial jurisdiction, the defendants Polsinelli Shughart PC and Richard K. Davis through Jay E. Heidrick (Mo. Lic. # 54699) filed a conditional stipulation to dismissal with prejudice providing attorney’s fees were awarded despite the

contrary controlling authorities applying to dismissals with prejudice.

58. When the Kansas trial Court granted the petitioner's voluntary dismissal, the court awarded attorneys fees but (or to manufacture a lawful reason for awarding attorneys' fees) the court changed the stipulation of dismissal with prejudice into a dismissal *without* prejudice.

59. When the Kansas District Court received the extrajudicial communication from Western District Clerk Lori Carr , the Hon. Judge Carlos Murguia ordered the petitioner to show cause why sanctions should not be ordered against the petitioner for appealing the dismissal:

“ORDER TO SHOW CAUSE. Petitioner did not respond to the court's order 159 requiring Petitioner to withdraw the petitioner's 147 stipulation of dismissal by December 1, 2008. Petitioner instead filed 163 amended notice of appeal with the 10th Circuit. Petitioner is hereby ordered to show cause to this court by 12/12/2008 why this case should not be dismissed for failure to withdraw the 147 stipulation of dismissal. Show Cause Response due by 12/12/2008. Signed by District Judge Carlos Murguia on 12/5/2008. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (jw) (Entered: 12/05/2008)”

Kansas District Court December 5, 2008 Order to Show Cause.

60. The parties were under a November 14, 2008 order by the Tenth Circuit Court of Appeals to give status reports on the proceedings in Kansas District Court after the petitioner's Kansas District Court Notice of Appeal filed simultaneously with his Second Amended Notice of appeal in Western District of Missouri.

61. The petitioner complied with the order filing a timely status report on December 10 2008 that included the November 26th, 2008 order by the Kansas District Court that on pg. 4 expressly gave the Petitioner until “December 10, 2008 to withdraw his stipulation for dismissal” .

62. To continue the manufactured Kansas District Court jurisdiction following the petitioner's voluntary dismissal of all remaining claims with prejudice and to discredit the petitioner, the defendants Polsinelli Shughart PC and Richard K. Davis through Mark A. Olthoff (Ks. Lic. # 70339) signed and filed a fraudulent status report in the Tenth Circuit contradicting the petitioner and the November 26 court order the petitioner attached in evidence by falsely stating that the petitioner had been ordered to withdraw his stipulation of dismissal by December first.

63. On December 18th , 2008 the Novation LLC cartel defendants Polsinelli Shughart PC and Richard K. Davis through Jay E. Heidrick (Mo. Lic. # 54699) filed a fraudulent status report in the Tenth Circuit US Court of Appeals for the purpose of misrepresenting the Kansas District Court order on the stipulated

dismissal as an order with prejudice, an order the Kansas District court appeared it recognized it lacked jurisdiction to award defendants' attorneys fees for, the whole device employed in bad faith by Jay E. Heidrick to postpone or defeat appellate review of the inappropriate dismissal of the petitioner's Missouri State law based contract claims.

64. The defendants Polsinelli Shughart PC and Richard K. Davis through Jay E. Heidrick (Mo. Lic. # 54699) falsely stated in the defendants' December 18th, 2008 Status Report to the Tenth Circuit that "...the United States District Court, District of Kansas entered a final Order dismissing petitioner's suit with prejudice."

65. The petitioner was forced to enter subsequent amended notices of appeal when the Kansas District Court continued to exercise substantive jurisdiction over issues subject to appeal in the Tenth Circuit in participation with the defendants Polsinelli Shughart PC and Richard K. Davis's scheme to manufacture jurisdiction.

66. On December 12, 2008 the trial court judge, the Hon. Carlos Murguia entered a final judgment declining to sanction the petitioner and clarifying that the deadline to withdraw the stipulation of dismissal had been December 10, 2008.

67. On December 19, 2008 Chief Deputy Clerk Douglas E. Cressler of The Tenth Circuit US Court of Appeals issued an order consolidating the appellate case numbers the clerk had earlier assigned: 08-3287, 08-3338, and 08-3345, all arising out of the same proceeding before the U.S. District Court of Kansas in *Lipari v. US Bancorp NA*, No. 2:07-CV-02146-CM-DJW.

68. The petitioner had been originally ordered by the Tenth Circuit to brief the court on its appellate jurisdiction after the petitioner had filed his notice of appeal on October 16, 2008 following the petitioner's October 15, 2008 stipulation of dismissal with prejudice of all remaining claims.

69. The petitioner briefed the Tenth Circuit Court of Appeals that their jurisdiction was merely the jurisdiction to review the appellate court's jurisdiction or lack thereof and that the Kansas District Court never obtained jurisdiction from the April 4, 2007 transfer order of Hon. Judge Fernando J. Gaitan, Jr. transferring the concurrent state claims case to Kansas District Court while the Tenth Circuit still had exclusive jurisdiction in in *MSC v. Neoforma, Inc. et al*, Case No. 06-3331 over the same matter or controversy.

70. Neither the Abeyance Order of Chief Deputy Clerk Douglas E. Cressler of The Tenth Circuit Case No. 08-3287 or the Tenth Circuit Consolidation Order resolved or made a finding of law on the presence or absence of Tenth Circuit Appellate Court jurisdiction over the petitioner's concurrent state law claims.

16th Circuit Extra Judicial Influence From Corrupt Kansas Officials

71. The petitioner amended his complaint to include Gene E Schroer, Rex A. Sharp, and Isaac L. Diel who caused misrepresentations to be fraudulently made in concert with Kansas Attorney Discipline Administrator Stanton Hazlett and the Novation LLC cartel defendant hospital supply cartel members to deprive the petitioner of representation throughout his litigation in Kansas and Missouri courts. See Appendix Eight Affidavit of Samuel K. Lipari.

72. Gene E Schroer, and Rex A. Sharp misled the petitioner to think they were going to represent the petitioner when in reality they were receiving pay or other benefits from the State of Kansas to elicit confidential information related to the petitioner's prosecution of his claims.

73. Rex A. Sharp was recorded by the petitioner after it seemed Sharp had dishonestly stated he was considering representing the petitioner at the time the petitioner's father had died and an extension in the Novation LLC cartel defendant General Electric hospital supply case before this court was sought on the basis of Sharp's representations. The audiotape is online at <http://www.medicalsupplychain.com/pdf/Rex%20Sharp%20Conversion.wav>

74. Rex A. Sharp and Isaac L. Diel were jointly working on an unrelated tire compound antitrust action when Rex A. Sharp on behalf of the Kansas Office of Attorney Discipline caused misrepresentations to be made during the first week of April 2007 to Michelle Hersh, Justin West and the Missouri office of Accountemps where the petitioner's former counsel Bret D. Landrith was registered for work.

75. The misrepresentations were that Diel had a temporary job reviewing scientific articles related to the chemical compounds and that he was qualified even though he was not a licensed attorney.

76. Landrith doubted their client's requirements and wrote a letter on April 11, 2007 to Justin West at Accountemps informing them that they had likely misunderstood their client's requirements.

77. The scheme was for Isaac L. Diel to trick Landrith into saying he was an attorney in the Overland Park office of Diel and thereby criminally prosecute the petitioner's witness to further the obstruction of the petitioner's litigation.

78. Lathrop & Gage LLP is liable for fraud and deceit, not only for William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter's (Mo. Lic. # 59079) misrepresentation to this court that the petition did not aver injury and claims of the petitioner as an unincorporated individual in Lathrop & Gage LLP's present motion in support of judgment on the pleadings; The petition describes many misrepresentations related to the Insure Missouri scheme to first cut off Medicaid to what became 90,000 Missouri citizens then to supply the Missouri hospitals through electronic marketplace for hospital supplies.

79. The Jackson County based Novation LLC cartel defendant Shughart, Thomson & Kilroy, P.C.'s frauds against the petitioner include fraudulent removal of the petitioner's contract based claims against US Bank and US Bancorp to federal court; fraudulent transfer of the US Bank and US Bancorp contract claims to Kansas District Court; fraudulent participation in a Kansas District Court joint case management order without any intent to produce discoverable documents to the petitioner; fraudulent destruction of discoverable electronic documents by in the possession of US Bank of US Bancorp despite notice to their agent Shughart, Thomson & Kilroy, P.C. to preserve them; fraudulent representation that the petitioner had failed to produce requested discovery documents by Shughart, Thomson & Kilroy, P.C.; fraudulent representation to the Hon. Judge Michael W. Manners to procure dismissal by unlawfully using the Kansas District Court interim decisions that were not final judgments with knowledge that they had been procured with John K. Power of Jackson County based Novation LLC cartel defendant Hush Blackwell Sanders, through the cartel's own fraud.

Extrinsic Fraud Through Extra-Judicial Influence Through Communications between Courts

80. The Novation LLC cartel members have been aided by non-defendant conspirators communicating extra-judicially to judges including the trial judge in 16th Circuit Court actions.

Temporal Relationship of Hon. Judge Michael Manners' dismissal with other courts

81. Hon. Judge Michael Manners's adoption of the previously dismissed cartel members' motions for dismissal violated the controlling law of this jurisdiction on claim and issue preclusion and the other legal basis advocated by the defendants including *Noerr-Pennington* based Immunity and the statute of limitations.

82. The Hon. Judge Michael Manners's Order dismissing with prejudice the previously dismissed cartel members was temporally related to similar decisions contradicting the controlling precedent of the respective jurisdictions by the Hon. Judge Carlos Murguia and the Hon. Magistrate David Waxse of Kansas District Court and the Hon. Fernando J. Gaitan, Jr. of the Western District of Missouri. See KS. Dist. Court case No. 2007cv02146; KS. Dist. Court case No. 2005cv02299 and W.D. of MO. Dist. Court case No. 2007cv00849.

83. The Hon. Judge Michael Manners's order adopting judgment on the pleadings by the Novation LLC cartel defendant Lathrop & Gage is temporally related to the ten day extension on discovery granted by the petitioner after the Novation LLC cartel Lathrop & Gage attorneys had adopted the modus operandi of the other cartel members in stating frivolous objections to production of discoverable documents as a sham petition to delay the petitioner's entry into the market for hospital supplies.

Hon. Fernando J. Gaitan, Jr. and St. Luke's Health System, Novation LLC

84. Before being appointed the federal bench by President George H.W. Bush, the Hon. Fernando J. Gaitan, Jr. was on the bench of the 16th Circuit Court.

85. The appearance of a fiduciary interest of the Hon. Fernando J. Gaitan, Jr. in the defendants St. Luke's Health System and Novation LLC as a director or corporate officer of St. Luke's Health System is given by the Hon. Fernando J. Gaitan, Jr.'s disclosure to the Judicial Conference.

86. The defendant St. Luke's Health System asserts it is an owner of the defendant Novation LLC and does over \$90,000,000.00 (ninety million dollars) of purchases exclusively through Novation LLC each year.

The Hon. Judge Carlos Murguia and the District of Kansas

87. The Hon. Judge Carlos Murguia has repeatedly made adverse rulings contrary to controlling precedent and against only the plaintiff in the present action that are temporally related with adverse rulings against the plaintiff made by Hon. Judge Fernando J. Gaitan, Jr. and Hon. Judge Michael W. Manners contrary to the controlling precedents of the Western District of Missouri and the State of Missouri respectively. See *Lipari v. General Electric Company, et al* W. D. of MO Case no 07-0849 and Appearance Docket of *Lipari v. Novation LLC, et al* 16th Cir. Missouri State Court Case No. 0816-04217.

88. On July 8, 2008 the Kansas District Court made a show cause order initiating the scheme to fraudulently procure dismissal of the plaintiff's claims on the false accusation by Novation LLC cartel defendants US Bank NA and US Bancorp that the plaintiff failed to produce documents and answers requested by the defendants that led instead to the partial dismissal on September 4, 2008 of the plaintiff's contract, tortious interference and fiduciary duty claims against US Bancorp.

89. The temporal relationship of rulings adverse to the plaintiff and involving adoption of extrajudicial interim orders and communications includes the dismissal of racketeering claims against the cartel members involved in extrinsic fraud to interfere in the plaintiff's ongoing antitrust litigation by Hon. Judge Fernando J. Gaitan, Jr. (a case Hon. Judge Gaitan had assigned to himself even though an open § 455 Motion for recusal based on his directorship of a defendant was on the record in the previous removal of the same action W. D. of MO Case no. 06-0573) on July 30, 2008. See *Lipari v. General Electric Company, et al* W. D. of MO Case no 07-0849.

90. The July 7, 2008 order of the Kansas District court in the same case or controversy dismissing the plaintiff's motion to reopen his federal antitrust and racketeering claims in KS Dist. Court case no. 05-2299-CM.

91. And also, the partial dismissal of August 8, 2008 Hon. Judge Michael W. Manners that Hon. Judge Michael W. Manners had in error requested on July 3, 2008. See *Lipari v. Novation LLC, et al* 16th Cir. Missouri State Court Case No. 0816-04217.

j. The Defendants Use Of Foreign Jurisdiction Attorney Discipline As An Instrument Of Criminality

92. The petitioner attempted to "cover" or remediate the breaches of contract by the Novation LLC antitrust cartel members US Bank NA and the General Electric Company a third time.

93. The petitioner had an agreement with Michael W. Lynch to obtain and use his services, connections and reputation in locating a publicly traded company to merge with to underwrite the costs of entering the hospital supply market.

94. The Novation LLC cartel General Electric defendants through their agents Seyfarth Shaw and Alcoa's use of wire tapping, private investigators, breaking and entry, government sourced intelligence and the internal court information obtained through Arizona operatives.

95. The Novation LLC cartel General Electric defendants through their agents Seyfarth Shaw and Alcoa

intentionally interfered with Michael W. Lynch by destroying his reputation by causing him to be jailed, terrorizing Lynch's wife and putting Lynch in fear for the safety of his family, trying to seize the property of Lynch's family home and the property of his brother and interfering with the payroll of Lynch's brother's plastics factory all for the purpose of inducing or causing a breach of Michael W. Lynch's contracts and relationships with the petitioner.

96. The evidence of this conduct by the Novation LLC cartel General Electric defendants was delivered to Bradley J. Schlozman under seal in *United States ex rel Michael W. Lynch v Seyfarth Shaw et al.* Case no. 06-0316-CV-W- SOW who was then acting as the interim US Attorney for the Western District of Missouri.

97. The relator Michael W. Lynch provided evidence to Western District US Attorney Bradley J. Schlozman discovered in April 2006 that a \$39,000,000.00 bribery fund was being used to secure outcomes in court cases including the shift of unfunded pension obligations of McCook Metals, Inc. to the Pension Benefit Guaranty Board (PBGC) at the expense of US taxpayers despite the obligation of Alcoa Aluminum financed and controlled by General Electric.

98. On information and belief Jerome Larkin, the Administrator The Illinois Attorney Registration and Disciplinary Commission is using his Illinois state agency to retaliate against the witnesses that came forward with evidence of judicial misconduct and reported it to the appropriate authorities.

99. This retaliation by Jerome Larkin in support of criminal norms including "pay to play" judicial corruption contrary to the public policy, rules of ethics and statutes of the State of Illinois has impacted Missouri citizens.

100. On information and belief the petitioner's witness Dustin Sherwood and his wife 's legal representation in defense of their \$9 million dollar estate was compromised by The Illinois Attorney Registration and Disciplinary Commission's extortion over the Sherwood's bankruptcy attorney Craig Collins.

101. On information and belief the Novation LLC cartel defendants Polsinelli Shughart PC, Husch Blackwell Sanders LLP and Lathrop & Gage LLP were able to communicate directions to the Sherwood's bankruptcy attorney Craig Collins and have him act and fail to act for the purposes of compromising Craig Collins' representation of Dustin Sherwood and his wife.

102. On information and belief this power of the defendants Polsinelli Shughart PC, Husch Blackwell Sanders LLP and Lathrop & Gage LLP is so well known among members of the Kansas City and Missouri Bar associations that Dustin Sherwood and his wife documented the refusal of representation by over 40 Missouri licensed attorneys in and around Jackson County, Missouri and could not obtain the services of a Missouri licensed attorney during the bankruptcy.

103. Dustin Sherwood provided the firms Polsinelli Shughart PC, Husch Blackwell Sanders LLP and Lathrop & Gage LLP that the circumstances of their corrupt extortion over members of the Missouri bar was so egregious that it would lead to the need to file for injunctive relief against the Missouri Board of Bar Governors.

104. In response, the Novation LLC cartel firms Polsinelli Shughart PC, Husch Blackwell Sanders LLP and Lathrop & Gage LLP had Dustin Sherwood jailed for reciting to an agent of the former Shughart Thompson & Kilroy, Inc. trustee what he believed to be his property rights under the law of the State of Missouri, preventing Sherwood from meeting the conditions set by the bankruptcy judge to stop the sell of his farm.

105. Dustin Sherwood's Kansas licensed attorney Craig Collins on information and belief was not permitted by the power of Polsinelli Shughart PC, Husch Blackwell Sanders LLP and Lathrop & Gage LLP to enter an appearance in the bankruptcy case filed in the US Distric Court sited in Jackson County until after Sherwood had been jailed.

106. Through Jerome Larkin, the defendants including Polsinelli Shughart PC, Husch Blackwell Sanders LLP and Lathrop & Gage LLP are using The Illinois Attorney Registration and Disciplinary Commission to threaten Craig Collins with disbarment if he works with the Sherwood witnesses Sidney J. Perceful or Bill Christianson or cooperates with Dustin Sherwood's criminal defense attorney.

107. On information and belief Craig Collins has been compromised by the Kansas Attorney Discipline Administrator Stanton Hazlett and extorted from providing representation in the interests of the petitioner's witnesses Donna L. Huffman and David M. Price who Collins claimed to represent in Kansas state courts and with Kansas state officials respectively.

108. The petitioner has been injured in his Missouri state court causes through the misrepresentations of the Kansas licensed attorneys Gene E Schroer, Rex A. Sharp of Gunderson Sharp & Rhein PC and Isaac L.

Diel, Sharp McQueen, P.A who misrepresented to the petitioner or his witnesses their false intent to perform legal tasks when in reality they were acting as agents of the Kansas Attorney Discipline Administrator Stanton Hazlett to intentionally interfere in the petitioner's Missouri state court litigation.

109. The petitioner was injured by Kansas Attorney Discipline Administrator Stanton Hazlett's Kansas licensed attorney agents Randall D. Grisell Sally Harris, and Michael Schmitt concerning Randall D. Grisell's fraud on the Kansas Supreme Court in presenting a facially false report signed by Randall D. Grisell, Sally Harris, and Michael Schmitt to that court on the plaintiff's counsel to procure the disbarment through fraud.

The Novation LLC cartel defendants Joel B. Voran, Lathrop & Gage LLP's open use of racketeering acts and RICO conspiracy to further the hospital supply cartel's conspiracy to defraud Medicare, Medicaid and Private Health Insurers by keeping the plaintiff out of the market.

110. The Jackson County based Novation LLC cartel defendants Joel B. Voran and Lathrop & Gage LLP, have been identified as RICO co-conspirators but not previously named as defendants in the plaintiff's ongoing RICO complaint that is concurrently in the U.S. District Court for the Western District of Missouri. See <http://www.medicalsupplychain.com/pdf/Lipari%20v%20GE%20et%20al%20Federal.pdf>

111. The defendants Joel B. Voran and Lathrop & Gage LLP are members of the Republican National Committee "RNC" conspiracy spoke that included former federal government officials in the previous Presidential administration of President George W. Bush.

112. The Novation LLC cartel defendants Joel B. Voran and Lathrop & Gage LLP helped to corruptly maintain the power of the conspiracy over the 16th Circuit and the Western District of Missouri Appellate and US District Courts by:

- providing support for voter suppression schemes in Jackson County;
- assisting in the reduction of the US Department of Justice to a protection racket controlled by Karl Rove;
- participating in the obstruction of justice by providing legal support in opposition to public records disclosure of emails in the Jefferson City and Washington D.C. Capitols;
- securing the wrongful firing of US Attorney Budd Cummings in Arkansas; and
- securing the wrongful firing of the US Attorney Todd Graves in the Western District of Missouri, sited in Jackson County.

- The defendants Joel B. Voran and Lathrop & Gage LLP helped to prevent news media from covering the news related to the wrongful firings of US Attorneys; and
- discouraged regional newspapers from covering the plaintiff's litigation with false warnings of liability.

113. The Novation LLC cartel defendants defendants Joel B. Voran and Lathrop & Gage LLP are part of an enterprise in fact that has now been joined by the latecomer defendats in the present action.

114. The Jackson County based conspiracy defendants Joel B. Voran, Lathrop & Gage LLP and the RNC were a spoke of the General Electric and Karl Rove conspiracy to defraud Medicare, Medicaid, Champus and private health insurers through artificial inflation of healthcare and hospital supply costs via the Novation LLC cartel scheme.

Ministerial Misconduct in related cases before the Western District Court of Appeals

116. The Western District Court of Appeals is mere blocks from the 16th Circuit Court and its non-judge personnel have repeatedly deviated from the Western District Court of Appeals' published rules, the Western District Court of Appeals controlling case law interpreting those rules, the Missouri Supreme Court Rules applying to All Appellate Courts, the requirements that orders be signed and through the issuance of orders signed and made by non-judge and non-clerk of the court staff.

117. The inhabitants of Jackson County working in the Western District Court of Appeals share the disposition toward the plaintiff expressed by other inhabitants of Jackson County through their officials and Western District Court of Appeals personnel have repeatedly prejudiced the plaintiff.

118. No change of ministerial policy was ever effected by the plaintiff's repeated calls, notice and complaints.

119. The inhabitants of Jackson County working in the Western District Court of Appeals gave no more than a few hours consideration to the plaintiff's Mandamus action against 16th Circuit Judge Hon. Michael W. Manners seeking to cause discovery to be enforced.

120. As a consequence of the failure to uphold discovery, the plaintiff was forced to proceed toward trial without any document production requests being honored or any interrogatory questions being honored by the GENERAL ELECTRIC defendants.

121. The inhabitants of Jackson County working in the Western District Court of Appeals prevented the plaintiff's prehearing request for transfer of an appeal to the Missouri Supreme Court from being ruled on by a judge for the purpose of disobeying the Missouri State Legislature's statutory provision for appeal upon the complete termination of claims against fewer than all defendants.

II. SUGGESTION IN SUPPORT

Substantive due process protects certain liberties that may not be restrained even if basic procedural steps are taken in error.

The right to life, liberty and the pursuit of happiness is expressed not only in Missouri's due process clause, but also as a "natural right" of all persons in Article I, Section 2. That section also provides that "to give security to these [natural rights] is the principal office of government, and that when government does not confer this security, it fails in its chief design."

This presence of different and more explicit expression of rights in the Missouri Constitution gives rise to more protection of those rights in the Missouri Constitution than the federal constitution. See, e.g., *Right to Choose v. Byrne*, 91 N.J. 287, 299-310 (N.J. 1982) (state constitutional provision guaranteeing right to life, liberty and happiness affords more protection to the right to choose than is afforded by the United States Constitution).

Due Process requires legal proceedings carried out fairly and in accord with established rules and principles. Due process standards are sometimes referred to as either substantive or procedural. Substantive due process refers to a requirement that laws and regulations be related to a legitimate government interest (e.g., crime prevention) and not contain provisions that result in the unfair or arbitrary treatment of an individual. Virtually no one challenges the general value of due process of law as a guarantee of procedural consistency and fairness.

Justice Felix Frankfurter expressed a commonly held view about procedural due process in *Malinski v. New York* (1945): "The history of American freedom is, in no small measure, the history of procedure." And in *Shaughnessy v. United States* (1953), Justice Robert Jackson stressed that controversy about substantive due process does not change the most fundamental and general agreement about procedural fairness, which "is what it [due process] most uncompromisingly requires."

To ensure Due Process fairness, the Missouri Rules of Civil Procedure provide for change of venue. Rule 51.04. Change of Venue From Inhabitants for Cause – Procedure states:

“(a) A change of venue may be ordered in any civil action triable by jury for the following causes:

- (1) That the inhabitants of the county are prejudiced against the applicant; or
- (2) That the opposite party has an undue influence over the inhabitants of the county.

(b) The application for change of venue must be filed at least thirty days before the trial date or within ten days after a trial date is fixed, whichever date is later.

(c) A copy of the application and a notice of the time when it will be presented to the court must be served on all parties.

(d) The application shall set forth the cause or causes for the change of venue. It need not be verified and may be signed by the party or by an agent or attorney.

(e) The adverse party, within ten days after the filing of the application for change of venue, may file a denial of the cause or causes alleged in the application. Such denial may be signed by the party, an agent or attorney, and need not be verified. If a denial is filed, the court shall hear evidence and determine the issues. If they are determined in favor of applicant, or if no denial is filed, a change of venue shall be ordered to some other county convenient to the parties and where the cause or causes do not exist. The court may enlarge the time for filing a denial as provided in Rule 44.01(b).

(f) Application for change of venue may be made by one or more parties in any of the following classes: (1) plaintiffs; (2) defendants; (3) third-party plaintiffs (where a separate trial has been ordered); (4) third-party defendants; (5) intervenors.

Each of the foregoing classes is limited to one change of venue and any such change granted any one or more members of a class, including changes granted under Rules 51.02, 51.03 or 51.04, exhausts the right of all members of the class to a change of venue, with this exception: in condemnation cases involving multiple defendants, as to which separate trials are to be held, each such separate trial to determine damages shall be treated as a separate case for purposes of change of venue.

(g) When a change of venue is ordered, the entire civil action shall be removed, unless a separate trial has been ordered, in which event the court shall order removed only that part of the civil action in which applicant is involved.”

The plaintiff is seeking change of venue because of the manifestation of prejudice of the inhabitants of Jackson County effecting proceedings involving the plaintiff’s claims in the 16th Circuit Court and consequently the Western District Court of Appeals which is also in Jackson County. Change of venue will be granted only for prejudice between inhabitant and movant (not between judge and movant).

The change of venue is automatic after a motion has been filed:

"Missouri's statutes have long expressly permitted transfer of suits to counties where they could not initially have been commenced...

Allowing an automatic change of venue upon timely application thus saves judicial resources that would otherwise be spent in determining whether a party could get a fair trial in the county in light of the prejudice that may have arisen in a particular case due to publicity or familiarity with the

parties or the issues involved. See *id.* at 513-14. This avoids any potential unfairness yet protects the convenience of the remaining parties by expressly providing that the new venue must be convenient and by giving the parties input into the new location for trial. "

STATE LEBANON SCHOOL DISTRICT III v. WINFREY STATE ex rel. LEBANON SCHOOL DISTRICT R-III, v. The Honorable Larry WINFREY, Case No. SC 86873.(January 31, 2006).

The plaintiff's motion is automatic because it is timely where there are open motions to dismiss filed by the defendants. Timeliness of Motion for Change of Venue:

"The school district also argues in its briefs that plaintiffs' motion for change of venue was untimely because it was not filed within 10 days of when Lebanon's answer originally was due. But, Rule 51.03 does not require that a motion for change of venue be filed within 10 days of when an answer hypothetically would have been due if no motions to dismiss had been filed or extensions of time sought. It provides that written application for a change of venue shall be made, "not later than ten days after answer is due to be filed; ." Under Rule 55.25(c), if a defendant files a motion to dismiss or other motion provided for in Rule 55.27, this "alters the time fixed for filing any required responsive pleadings." In the case of a motion to dismiss, "the responsive pleading shall be filed within ten days after notice of the court's action." Rule 55.25(c). Defendant Lackey filed a motion to dismiss; his answer was not due to be filed until 10 days after that motion was ruled on. The answer had not yet been filed at the time plaintiffs filed their motion for change of venue. Their motion, therefore, was timely under Rule 51.03."

STATE LEBANON SCHOOL DISTRICT III v. WINFREY STATE ex rel. LEBANON SCHOOL DISTRICT R-III, v. The Honorable Larry WINFREY, Case No. SC 86873.(January 31, 2006).

CONCLUSION

Whereas for the above reasons, the plaintiff respectfully requests the court automatically grant the plaintiff's motion for change of venue and halt responses due and proceedings on existing motions until change of venue is accomplished.

Respectfully submitted,

S/ Samuel K. Lipari

SAMUEL K. LIPARI
PLAINTIFF *PRO SE.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 22nd day of February 2010 by hand delivery, by first class mail postage prepaid, or

by email to:

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