

No. 17-

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IN THE  
**Supreme Court of the United States**

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RICHARD WANN,

*Petitioner,*

*v.*

ST. FRANCOIS COUNTY, MISSOURI, *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED FOR REVIEW**

Whether the Per Curiam Decision of the Eighth Circuit Court of Appeals affirming the Eastern District Court of Missouri's dismissal of the case without leave to amend on the grounds of Absolute Judicial Immunity as to the state court trial judge Hon. Shawn Ragan McCarver and Qualified Immunity as to the St. Francois County Public Administrator V. Kenneth Rohrer, Edward Pultz, Attorney for Public Administrator V. Kenneth Rohrer, and Brice Sechrest Former Attorney for Richard Lee Wann, although an amended complaint was presented to the District Court, violated Supreme Court Rule 10 (a) and (c) in that:

(1) the Court of Appeals decision affirming the dismissal without leave to amend despite an amendment having been presented to the District Court:

(a) "sanctioned such a departure by a lower court from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power" [Supreme Court Rule 10 (a)]; and

(b) "decided an important federal question in a way that conflicts with relevant decisions of this Court" [Supreme Court Rule 10 (c)]; and

(2) the Court of Appeals decision affirming the dismissal on the grounds of Absolute Judicial Immunity as to the state court trial judge Hon. Shawn Ragan McCarver and Qualified Immunity as to the St. Francois County Public Administrator V. Kenneth Rohrer, Edward Pultz,

Attorney for Public Administrator V. Kenneth Rohrer,  
and Brice Sechrest Former Attorney for Richard Lee  
Wann “decided an important federal question in a way that  
conflicts with relevant decisions of this Court” [Supreme  
Court Rule 10 (c)].

**PARTIES TO THE PROCEEDING**

**Plaintiff**

RICHARD LEE WANN, an individual

**Defendants**

ST. FRANCOIS COUNTY, MISSOURI;

V. KENNETH ROHRER, an individual, St. Francois County Public Administrator, and Former Temporary Guardian Ad Litem of Richard Lee Wann;

EDWARD PULTZ, an individual, and Attorney for Public Administrator of V. Kenneth Rohrer;

BRICE SECHREST, an individual, and Former Attorney for Richard Lee Wann;

HON. SHAWN RAGAN McCARVER, an individual, and Associate Judge for the Circuit Court of St. Francois County, Missouri, Probate Division;

FARMINGTON MISSOURI HOSPITAL CO., LLC, a Missouri Domestic Limited Liability Company;

AHMAD ARDEKANI, M.D., an individual;

NICOLE (NIKKI) ROTTER, MSW, an individual;

AMERICARE AT MAPLEBROOK ASSISTED LIVING, LLC, a Missouri Domestic Limited Liability Company;

and

DOES 1-50.

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## **JURISDICTION OF THE COURT**

The judgment of the Court of Appeals was entered on October 17, 2017. The petition for rehearing was denied on November 22, 2017.

This Court has jurisdiction to review the judgment of a court of appeals on a writ of certiorari under 28 U.S.C. Section 1254.

## **CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND REGULATIONS**

### **United States Constitution**

#### **AMENDMENT I**

Congress shall make no law respecting an establishment of religion, or prohibiting, the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### **AMENDMENT V**

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty or property without due process

of law; nor shall private property be taken for public use without just compensation.

#### **AMENDMENT VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

#### **AMENDMENT XIV**

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

#### **42 U.S. Code § 1983 - Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by

the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

**42 U.S. Code § 1985- Conspiracy to interfere with civil rights**

**(1) PREVENTING OFFICER FROM PERFORMING DUTIES**

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

**(2) OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR**

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any

party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

### **(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES**

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for

President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

#### **CONCISE STATEMENT OF CASE**

This is a case in which Plaintiff Richard Lee Wann (hereinafter sometimes referred to as “Richard” or “Wann”) was fraudulently induced to enter the “geriatric ward” of Mineral Area Regional Medical Center (hereinafter referred to as “MARMC ”) on the day he was released from MARMC to return home after a 7 day hospital stay at MARMC for a scheduled colonoscopy. Richard was transported to the geriatric ward where he was fraudulently induced to voluntarily admit himself into the geriatric ward.

This was never intended as a voluntary admission, but rather was a hold for placement.

Within 24 hours, Richard immediately attempted to leave and continued to attempt to leave as was his right under the voluntary admission, but was restrained from doing so in violation of the conditions of the voluntary admission and his civil rights.

False assessments were intentionally done to implement an elopement policy and to order drugs to manage behavior.

Drugs were ordered and forced upon Richard without Richard's consent in violation of the conditions of the voluntary admission and his civil rights.

For every scheduled release date and meeting with family Richard was drugged with extra drugs with impunity. The staff then altered records removing Narcotics from billing but left them unintentionally in the administration record as given and with a nurses name and time, while some Narcotics were in the billing but missing out of the administration record as unknown nurse unknown time only as a date in the billing record.

Most egregious, Nurse Notes showed Narcotics as given, but were missing in both billing and administration records. This combination of records showed the files were "tampered" to eradicate how many times Narcotics were administered to Richard, at what dose and when.

The nightmare of involuntary imprisonment in a "locked down hospital facility" for 37 days with chemical restraints; being given psychotropic drugs to which he did not consent which altered his mental state; caused the involuntary appointment of the St. Francois County Public Administrator Rohrer as his Temporary Guardian and Conservator of his Estate on June 13<sup>th</sup> 2013.

Additionally, prior to the appointment and during the "involuntary imprisonment" in the geriatric ward at MARMC, Darlene Wann, Richard's sister in law and

cousin to Judge McCarver fraudulently gained access to Richard's residence and "unlawfully removed without Richard's permission" Richard's personal financial records.

She delivered such "stolen" financial records to Rotter, who delivered such "stolen" financial records to Rohrer who used such "stolen" financial records to obtain the position of Temporary Guardian and Conservator of Richard's Estate.

Richard was prevented from attending the hearing for a Temporary Guardian and Conservator of his Estate due to the forced psychotropic drugs given to him without his consent while being "involuntarily imprisoned" in the geriatric ward at MARMC.

Rohrer then placed himself on Richard's payroll without consent by Richard or his children.

Rohrer ignored the consent agreement he had drafted and had McCarver sign, by placing Richard into another "lock down" for an additional 7 1/2 months paying for such from Richard's monies.

The looting of Richards's savings began by the Guardian by taking of money from his accounts to pay for the Guardian as personal representative; the Guardian's attorney's and a court appointed GAL who assisted the Guardian and Guardian's attorney to fight against Richard's freedom.

Richards daughter complied with a court order and entrusted Guardian with Richard's papers and safety deposit box key at First State Community Bank Box on

June 20<sup>th</sup> at 4:30pm giving the Temporary Guardian sole access to this box containing CD certificates of deposit and 91 US Treasury Bonds and other effects.

Temporary Guardian Rohrer claimed he only retrieved 87 bonds. Four bonds valued at \$30,000 upon maturity did not make it into the original accounting submitted to the court under seal.

The accounting that was open for Richard to view did not include the value of his home in the total of next assets and the inventoried CD Cash Deposits drawing interest was listed as evidence of Debt.

Rohrer taking the four treasury bonds left him no choice to but to fight hard to keep Richard as a ward as it was impossible to simply add the missing treasuries back.

This explained the aggressive nature of this guardian's actions in the 12 months he was in charge despite the fact Richard did not need a guardian or conservator. This explained the refusal to appear for subpoena to produce documents, and the Guardian's request for a protective order McCarver refused to sign, the request to the court to force a \$30,000 deposit for Guardian's lawyer as a trust to keep the litigation going and explaining the near \$30,000 missing, it didn't explain the other problems with the accounting.

The facilities in which Richard was "locked down" used medications to which Richard did not consent to alter his mental state or to sedate him, or both; and causing him to suffer both emotional distress and physical stress.

Richard was threatened by staff that if he left "he would go to a place not so nice" and on more than one

occasion warned “if he did leave his daughter where ever she was would be arrested even if he left alone or with someone else and she had nothing to do with it”.

The struggle of being under threat of arrest if he left, drugged in his food, drugged by intimidation or force and, not being heard by court appointed counsel Sechrest to whom he was paying over thousand a month, social services visiting and unable to stop the “lock up” or the looting of his estate and Rohrer’s personal attacks on Richard and his children and McCarver’s indifference to his rights took a toll on Richard’s trust in the system.

The most egregious part of this case was the admission by Darlene Wann in or about October 31, 2013 to Theresa Brown that she [Darlene] talked to Judge McCarver about Richard’s case.

This fact alone, voided any decision by Judge McCarver as such admission shows an ex parte communication with the judge from the wife of a party [Robert Wann] and an interested person [Richard’s sister in law].

When Richard emerged from his “lock down” a changed man, he was a physical and mental wreck due solely to the actions of the Defendants and no longer feels truly safe from this kind of exploitation.

### **FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED**

The original Verified Complaint at TC Dkt. 1, Par. 10-16 and the First Amended Verified Complaint at TC Dkt. 118, Par. 15-19 showed:

(1) The Hon. Shawn Ragan McCarver, Associate Judge for the Circuit Court of St. Francois County, Missouri, Probate Division [McCarver] was the attorney for Richard Lee Wann's brother, Robert Wann, in the probate matter *Pear Eunice Wann, Incapacitated, Disabled*, Case No. 24P069600996 in the Circuit Court of St. Francois County, Missouri, Probate Division regarding probate and guardian issues of their mother in which Richard and Robert Wann were adversaries;

In such capacity as attorney for Robert Wann, McCarver learned information about Richard, Robert, Theresa (Wann) Brown, and Richard H. Wann, parties in the case of *In the Matter of Richard Lee Wann* [Wann Case] from outside the case which prejudiced McCarver in the decision of making V. Kenneth Rohrer [Rohrer] the temporary guardian and temporary conservator in the case of *In the Matter of Richard Lee Wann*;

Additionally, McCarver was the cousin of Darlene Wann, wife of Robert Wann actively seeking the conservatorship with Robert Wann; and

McCarver was required to disclose these facts under Missouri Supreme Court Rule 51.05 (e), and transfer the case to the presiding judge of the circuit for reassignment under Missouri Supreme Court Rule 51.07;

(2) The First Amended Verified Complaint showed at TC Dkt. 118, Par. 11 Darlene Wann admitted to communicating with McCarver alone about the conservatorship outside the court as follows:

“Darlene Wann in or about October 31, 2013 admitted to Theresa Brown that she [Darlene]

talked to Judge McCarver about Richard's case. This fact alone, voids any decision by Judge McCarver as such admission shows an ex parte communication with the judge from the wife of a party [Robert Wann]";

(3) The First Amended Verified Complaint showed at TC Dkt. Par. 71:

Rohrer removed over 90 savings bonds from Wann's bank safety deposit box, kept four worth \$30,000.00 and never reported them, listed them on the inventory or accounted for them. The theft of the bonds was confirmed in 2014; and

(4) Rohr and St. Francois County had insurance coverage in one or more forms to cover wrongful conduct in Rohrer's office with \$1.5 million through Ohio Casualty Insurance Company; amongst others.

**BASIS FOR FEDERAL JURISDICTION  
IN THE DISTRICT COURT**

Jurisdiction in the District Court for the Eastern District of Missouri was based upon:

(1) 28 U.S.C. §§1331 and 2201-02 to seek declaratory and other relief;

(2) 42 U.S.C. §1983 for violation of the rights protected under the First, Fifth, Sixth and Fourteenth Amendments, and for the extrinsic fraud of an officer of the Court upon the Court resulting in an adverse state court decision (see *Kougasian v. TSML, Inc.*, 359 F.3d 1136 (9th Cir. 2004);

(3) 42 U.S.C. §1985 (2) for violation of the rights protected under the First, Fifth, Sixth and Fourteenth Amendments; and

(4) 28 U.S.C. §1332 as Richard presently is a resident of California, all defendants are residents of Missouri, and the amount in controversy is greater than \$75,000.00. [TC Dkt. 1; Par. 17-20]

### **ARGUMENT SUPPORTING ALLOWANCE OF WRIT**

#### **I. The Court's Supervisory Power needs to be invoked regarding Absolute Judicial Immunity, Qualified Immunity and Leave to Amend to stop a split in the Circuits Violating Supreme Court Rulings.**

A split in the circuits exists on the matters of Absolute Judicial Immunity, Qualified Immunity and Leave to Amend. This split affects thousands of cases in the largest circuits.

The Eighth Circuit and the Ninth Circuit extended Absolute Judicial Immunity to “Disqualified Judges” who refused to obey the Law and “Step Down from the Case” in “Unpublished Opinions”. The Eleventh Circuit presently has such an “unpublished opinion” appeal pending.

The Eighth Circuit and Ninth Circuit extended Qualified Absolute Immunity and the Eleventh Circuit has a case pending to extend such.

The Eighth Circuit and Ninth Circuit constricted leave to amend and the Eleventh Circuit has a case pending.

The cases in the circuits are analogous. In each case the district court dismissed the case on the grounds of Absolute Judicial Immunity or qualified immunity when the state court judges were disqualified under state law from the outset of the case and refused leave to amend.

The cases are:

- (1) *Stephan Brooks et al. v. Paco Michelle Atwood et al.*, Ninth Circuit Case No. 17-55341, unpublished opinion, Dkt. 17-1.

The Court circumvented absolute judicial immunity by stating at pages 2-3:

“The district court properly dismissed Brooks’ claims under 42 U.S.C. § 1983 against the individual defendants involved with the state probate proceedings because Brooks failed to allege facts sufficient to establish that these defendants were acting under color of state law. *See Franklin v. Fox*, 312 F.3d 423, 444-45 (9th Cir. 2002) (tests for determining whether a private individual’s actions amount to state action).

The district court properly dismissed Brooks’ claims under 42 U.S.C. § 1985(2) because Brooks failed to allege facts sufficient to state a plausible claim for relief. *See Portman v. County of Santa Clara*, 995 F.2d 898, 908-09 (9th Cir. 1993) (elements of a cause of action under 42 U.S.C. § 1985(2)); *see also Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010)

(although pro se pleadings are to be liberally construed, a plaintiff must present factual allegations sufficient to state a plausible claim for relief).”

The Court did not address the issue that the state court judges were disqualified from the outset due to:

(1) the illegal payments from LA County to the judges, LA County’s interest in the increased taxes from the sale of the property at issue in both the probate case and the partition case;

(2) the judges and LA County and its employees having received retroactive immunity from criminal prosecution, civil liability and disciplinary action under Section 5, of SBX 2 11 for giving and receiving such payments, respectively; and

(3) the judges ordering 90 continuances in four cases before the Superior Court causing a delay of approximately nine years without any decision as to the ownership of the “property” by the “Estate” resulting in an uncontested “fraud upon the court” motion in the Superior Court and no absolute judicial immunity for the judges.

The Court granted absolute quasi-immunity under *Mullis v. U.S. Bankr. Court*, 828 F.2d 1385, 1390 (9th Cir. 1987) cert. denied, 486 U.S. 1040 (1988) to actions of state Superior Court Clerks of perverting and obstructing justice in violation of California Penal Code Sections 132, 135, 135.5 and 182 (a)(5)(1) by destroying documents filed by Stephan Brooks amongst other things and action of state Court of Appeal Clerks of perverting and

obstructing justice in violation of California Penal Code Sections 132, 135, 135.5 and 182 (a) (5) (1) by filing Paco Michelle Atwood’s motion to dismiss appeal No. B267893 before the record was filed in violation of California Rule of Court Rule 8.57 (a) which required the motion to be accompanied by a “certificate of the superior court clerk, a declaration or both stating” various things which did not accompany the motion.”

Respondent Court Clerks Carter and Lane, respectively, did not contest such actions did not involve the exercise of discretion in resolving disputes associated with deliberative actions of the court as set forth in *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435, 113 S.Ct. 2167, 124 L.Ed.2d 391 (1993) – court declined to extend the immunity to court reporters because transcribing verbatim transcripts does not involve the level of authoritative or “**discretionary decisionmaking that the doctrine of judicial immunity is designed to protect.**” (Emphasis added.)

In contrast, *Mullis* held at 828 F.2 1390 the clerks who refused to accept an amended petition acted within the jurisdiction of the court of “filing a petition” and were immune from damages. This differed from a criminal violation and from a violation of a court rule requiring a clerk to perform his/her duty and file the document. See CRC Rule 8.23.

#### **“Rule 8.23. Sanctions to compel compliance**

**The failure of a court reporter or clerk to perform any duty imposed by statute or these rules that delays the filing of the appellate**

**record is an unlawful interference with the reviewing court's proceedings. It may be treated as interference in addition to or instead of any other sanction that may be imposed by law for the same breach of duty.** This rule does not limit the reviewing court's power to define and remedy any other interference with its proceedings." (Emphasis added.); and

(2) *William T. Overcash et al., v. Mark D. Shelnutt, et. al.*, Eighth Circuit Case No. 17-13721 (Pending) USDC Middle District of Florida Case No. 5:15-cv-00555-CEM-PRL Order of Dismissal with Prejudice on March 29, 2017 TC Dkt. 195, Denial of Motion to Amend on March 29, 2017 TC Dkt. 197, Denial of Motion to Alter or Amend a Judgment on August 8, 2017 TC Dkt. 220.

The District Court ignored the holdings of *Stump v. Sparkman*, 435 U.S. 349, 359 (1978), *Forrester v. White*, 484 U.S. 219, 229, 108 S.Ct. 538 (1988) and *Mireles v. Waco*, 502 U.S. 9, 13, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991) in determining actions of judges wrongfully appointed were encompassed by Absolute Judicial Immunity, citing to the vacated case of *Martinez v. Winner*, 771 F.2d 297, 424, 434 (10th Cir. 1985), vacated as moot after remand from Supreme Court 800 F.2d 230 (10th Cir. 1986).

The District Court was aware that *Martinez* was vacated as it cited to *Parent v. New York*, 786 F. Supp. 2d 516, 532 (N.D.N.Y. 2011). The District Court neglected to state *Parent* was decided based upon the New York statute providing "[t]he assignment of cases and issuance of consolidation orders are judicial functions

normally performed by, and statutorily reserved to [Chief Judges]” as shown by the subsequent case of *Zeigler v. State*, 948 F.Supp.2d 271 (N.D.N.Y. 2013) holding a judge engaging in administrative actions is not protected by absolute judicial immunity citing precedents at 948 F.Supp. at 283-284.

The District Court acknowledged that the Florida Rules deem the “assignment of judges to preside over cases” as an administrative matter. (Doc.195 at page 8). It should be noted that the re-assigning of cases to judges in Florida is generally done by either the Office of the Clerk of Courts or the Administrative Office of the Circuit Courts.

It was undisputed that the Fifth Judicial Circuit Administrative Order No. 2001-3 was not employed in the assignment of judges in the *Overcash v. Overcash* dissolution of marriage case, the dependency case involving Overcash’s daughter, or in the adoption case involving Overcash’s daughter.

It was also clear that Overcash’s claim in this case, as a result of the failure to comply with the mandates of the administrative order, is that the Judicial Defendants acted in the “clear absence” of all jurisdiction and that the assignment of judge was not a judicial act. Thereby subjecting the Judicial Defendants to a claim for damages in this matter free from any protections of absolute or qualified immunities.

The assignment to presiding judges violated the procedural requirements in the Fifth Judicial Circuit Administrative Order No. 2001-3 as it occurred without

first sending the case to the existing judges in the court. The assignment violated Florida Rules of Judicial Administration, Rules 2.205 (a) 4 Assignments of Judges and Justices and 2.215 and deprives the presiding judges of jurisdiction.

The District Court's denial of the motion to amend on the same day as dismissing the Complaint with prejudice violated the policy of liberal amendments set forth in *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

(3) The case of *Grazzini-Rucki v. Knutson*, No. 14-2569 (8th Cir. 2015) is the only other case that makes the same holding as the District Court in the present and cases in a non-published Eighth Circuit case that has never been cited holding the assignment of cases by a judge to himself is judicial [citing *Martinez* and custody statutes].

The above cases along with the Wann case establish a trend of unpublished decisions which may be used:

(1) to undermine established Supreme Court precedents precluding Absolute Judicial Immunity being extended to administrative acts unless dictated by statute;

(2) to undermine established Supreme Court precedents precluding Qualified Absolute Judicial Immunity being extended to non judicial officers making non judicial discretionary decisionmaking acts; and

(3) to undermine established Supreme Court precedents providing for amendments unless:

(a) there has been undue delay, bad faith, dilatory motive or repeated failure to cure deficiencies by amendments previously allowed;

(b) where allowing the amendment cause undue prejudice to the opposing party; or

(c) where the amendment would be futile.

Given this conflict, Wann respectfully requests the Court exercise its supervisory power and resolve the conflict created by these unpublished opinions which under FRAP Rule 32.1 may be cited.

**II. The Court's Supervisory Power needs to be invoked to ensure form is not placed over substance, due process occurs and relevant decisions of the Court are followed when trial courts deny leave to amend the original complaint or an amended complaint is before the court prior to the court's decision to dismiss.**

The problem of trial courts denying leave to amend is universal. The examples of the Wann, Overcash and Brooks cases demonstrate the need for the Court to act now.

In the *Wann* case an Amendment was submitted under a Court ruling which did not require a motion and rejected, then a motion was submitted under a ruling which did not specify the previously submitted amendment which was still on file had to be refilled and was denied resulting in the amendment being stricken.

In the *Overcash* case, the motion for leave to file the amendment and proposed amendment were before the court prior to the court ruling on the motion to dismiss the complaint to be replaced by the amended complaint. The court dismissed the complaint with prejudice and denied the pending motion to amend the complaint

In the *Brooks* case, the “private” defendants were dismissed with prejudice in the original complaint.

In each of these situations the dismissal was on the merits under FRCP Rule 41 and the plaintiff was denied the right to have his case heard for reasons not sanctioned under *Foman v. Davis*.

In *Societe Internationale Pour Participations Industrielles et Commerciales S.A. v. Rogers*, 357 U.S. 197, 209 (1958), the Court stated regarding a striking under FRCP Rule 37 and the Fifth Amendment “[t]here are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his case.”

The same holds true for FRCP Rule 15.

Wann respectfully requests the Court exercise its supervisory power to ensure due process occurs when amendments are sought.

**III. The Court of Appeals decision affirming the dismissal on the grounds of Absolute Judicial Immunity as to the state court trial judge Hon. Shawn Ragan McCarver and Qualified Immunity**

**as to the St. Francois County Public Administrator  
V. Kenneth Rohrer, Edward Pultz, Attorney for  
Public Administrator V. Kenneth Rohrer, and Brice  
Sechrest Former Attorney for Richard Lee Wann  
“decided an important federal question in a way  
that conflicts with relevant decisions of this Court”**

The abuse of Absolute Judicial Immunity is eroding the confidence in the judiciary. Courts are extending their reach far beyond the original intent. Courts of Appeal are not even questioning the overreaching.

The Court of Appeals Opinion filed 10/17/2017 Entry 4590018 states at pages 2-3 in relevant part:

“Even if we construe Wann’s argument as challenging the judgment itself, as distinct from the denial of his motion to “correct” it, we agree with the district court that there is no error. Federal Rule of Civil Procedure 41(b) specifies that unless the dismissal order states otherwise, a dismissal for failure to state a claim operates as an adjudication on the merits, and the judgment simply made this explicit.”

In doing this, the court adopted the reasoning of the District Court holding Absolute Judicial Immunity protected McCarver, Qualified Immunity protected Rohrer and Pultz and Sovereign Immunity protected St. Francois County.

The Original Verified Complaint at TC Dkt. 1, Par. 16 and First Amended Verified Complaint at TC Dkt.118, Par. 20 showed:

“Other Missouri statutes and Missouri Supreme Court Rule 51.05 provided for the disqualification of McCarver in the case of *In the Matter of Richard Lee Wann* as follows:

Missouri Revised Statutes, Chapter 472, Probate Code – General Provisions, §472.060 states in relevant part:

**“Disqualification of Judge.472.060.** No judge of probate shall sit in a case in which the judge is interested, **or in which the judge is biased or prejudiced against any interested party**, in which the judge has been counsel or a material witness, **or when the judge is related to either party . . .”** (Emphasis added).

Missouri Code of Judicial Conduct, Rule 2.2.9 prohibits Ex Parte Contacts.

As a “disqualified judge” all of McCarver’s decisions were void.

Absolute Judicial Immunity did not protect Judge McCarver against ex parte contacts with a party or interested person outside the courtroom as occurred with Darlene Wann.

The U.S. Supreme Court stated in *Stump v. Sparkman*, 435 U.S. at 362:

“The relevant cases demonstrate that the factors determining whether an act by a judge

is a “judicial” one relate to the nature of the act itself, *i. e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i. e.*, whether they dealt with the judge in his judicial capacity.”

These acts of Judge McCarver were not normally performed by the judge, were not to the expectation of the parties and were not dealing with the judge in his judicial capacity, as he was not adjudicating.

The removal of Judge McCarver removed any quasi absolute judicial immunity for Rohrer.

Rohrer would not have any qualified immunity as he misappropriated \$30,000.00 of bonds from Wann’s safety deposit box, a clear violation of law at the time it occurred.

Rohrer and St. Francois County had insurance coverage in one or more forms to cover wrongful conduct in Rohrer’s office with \$1.5 million through Ohio Casualty Insurance Company; amongst others.

The insurance coverage mitigated against sovereign immunity as it demonstrated St. Francois County accepted the risks of litigation.

The removal of these immunities would then extend to Pultz [Rohrer’s attorney] and Sechrest [Wann’s attorney appointed by McCarver].

As shown above, the granting of the immunities violated *Stump v. Sparkman*, 435 U.S. at 359, *Forrester v. White*, 484 U.S. at 229 and *Mireles v. Waco*, 502 U.S. at 13.

Wann respectfully requests the Court exercise its supervisory power to compel the Eighth Circuit to conform to the relevant decisions of the Court.

**CONCLUSION**

Petitioner respectfully submits the Petition for Writ of Certiorari be granted. The Court may wish to consider summary reversal of the decision of the Eighth Circuit Court of Appeals.

Dated: February 16, 2018

Respectfully submitted,

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(310) 622-6900

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*Counsel for Petitioner*

## **APPENDIX**

1a

**APPENDIX A — OPINION OF THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH  
CIRCUIT, FILED OCTOBER 17, 2017**

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 16-3857

RICHARD LEE WANN,

*Plaintiff - Appellant,*

v.

ST. FRANCOIS COUNTY, MISSOURI; V. KENNETH  
ROHRER, AN INDIVIDUAL, ST. FRANCOIS  
COUNTY PUBLIC ADMINISTRATOR, AND  
FORMER TEMPORARY GUARDIAN AD LITEM  
OF RICHARD LEE WANN; EDWARD PULTZ, AN  
INDIVIDUAL, AND ATTORNEY FOR PUBLIC  
ADMINISTRATOR V. KENNETH ROHRER; BRICE  
REED SECHREST, AN INDIVIDUAL, AND FORMER  
ATTORNEY FOR RICHARD LEE WANN; SHAWN  
RAGAN MCCARVER, AN INDIVIDUAL, AND  
ASSOCIATE JUDGE FOR THE CIRCUIT COURT  
OF ST. FRANCOIS COUNTY, MISSOURI, PROBATE  
DIVISION; FARMINGTON MISSOURI HOSPITAL  
COMPANY, LLC, A MISSOURI DOMESTIC LIMITED  
LIABILITY COMPANY; AHMAD ARDEKANI, M.D.,  
AN INDIVIDUAL; NICOLE ROTTER, MSW, AN  
INDIVIDUAL; AMERICARE AT MAPLEBROOK  
ASSISTED LIVING, LLC, A MISSOURI DOMESTIC  
LIMITED LIABILITY COMPANY,

*Defendants - Appellees.*

*Appendix A*

Appeal from United States District Court for the  
Eastern District of Missouri - St. Louis

October 13, 2017, Submitted  
October 17, 2017, Filed

PER CURIAM.

Richard Wann appeals a series of orders in which the district court<sup>1</sup> rebuffed his efforts to amend his complaint. We do not read the relevant portion of the district court’s scheduling order—“Any other motion to amend the complaint shall be filed no later than June 1, 2016”—as pre-approving an amendment, eliminating the need to request leave to amend, or otherwise authorizing the filing of an amended complaint without an accompanying motion for leave. *See* Fed. R. Civ. P. 15(a)(2) (except within defined windows not relevant here, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave”); *cf. United States v. Mask of Ka-Nefer-Nefer*, 752 F.3d 737, 742 (8th Cir. 2014) (“[A] district court in granting a motion to dismiss is not obliged to invite a motion for leave to amend if plaintiff did not file one.”). Wann’s motion for reconsideration of the order striking his unauthorized amended complaint did not contain any argument for granting leave to amend, so the district court did not abuse its discretion by denying it. *See Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008).

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1. The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.

*Appendix A*

Wann also purports to challenge the district court's refusal to alter the judgment to specify that the dismissal of some of his claims was without prejudice. That issue is not properly before us, because Wann did not file a notice of appeal from the relevant order or supplement his already-filed notice to include it. *See Burgess v. Suzuki Motor Co.*, 71 F.3d 304, 306 (8th Cir. 1995) (requirement that notice of appeal identify order being appealed is jurisdictional); *see also* Fed. R. App. P. 3(c)(1)(B), 4(a)(4)(B)(ii). Even if we construe Wann's argument as challenging the judgment itself, as distinct from the denial of his motion to "correct" it, we agree with the district court that there is no error. Federal Rule of Civil Procedure 41(b) specifies that unless the dismissal order states otherwise, a dismissal for failure to state a claim operates as an adjudication on the merits, and the judgment simply made this explicit. We decline to address the arguments raised for the first time in Wann's reply brief. *See Mahaney v. Warren County*, 206 F.3d 770, 771 n.2 (8th Cir. 2000) (per curiam).

The judgment of the district court is affirmed.

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**APPENDIX B — JUDGMENT OF THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH  
CIRCUIT, FILED OCTOBER 17, 2017**

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 16-3857

RICHARD LEE WANN,

*Plaintiff-Appellant,*

v.

ST. FRANCOIS COUNTY, MISSOURI; V. KENNETH  
ROHRER, AN INDIVIDUAL, ST. FRANCOIS  
COUNTY PUBLIC ADMINISTRATOR, AND  
FORMER TEMPORARY GUARDIAN AD LITEM  
OF RICHARD LEE WANN; EDWARD PULTZ,  
AN INDIVIDUAL, AN ATTORNEY FOR PUBLIC  
ADMINISTRATOR V. KENNETH ROHRER;  
BRICE REED SECHREST, IN INDIVIDUAL, AND  
FORMER ATTORNEY FOR RICHARD LEE WANN;  
SHAWN RAGAN MCCARVER, AN INDIVIDUAL,  
AND ASSOCIATE JUDGE FOR THE CIRCUIT  
COURT OF ST. FRANCOIS COUNTY, MISSOURI,  
PROBATE DIVISION; FARMINGTON MISSOURI  
HOSPITAL COMPANY, LLC, A MISSOURI  
DOMESTIC LIMITED LIABILITY COMPANY;  
AHMAD ARDEKANI, M.D., AN INDIVIDUAL;  
NICOLE ROTTER, MSW, AN INDIVIDUAL;

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*Appendix B*

AMERICARE AT MAPLEBROOK ASSISTED  
LIVING, LLC, A MISSOURI DOMESTIC  
LIMITED LIABILITY COMPANY,

*Defendants-Appellees.*

Appeal from U.S. District Court for the Eastern  
District of Missouri - St. Louis (4:15-cv-00895-CDP)

**JUDGMENT**

Before COLLOTON, BOWMAN and KELLY, Circuit  
Judges.

This appeal from the United States District Court was  
submitted on the record of the district court and briefs  
of the parties.

After consideration, it is hereby ordered and adjudged  
that the judgment of the district court in this cause is  
affirmed in accordance with the opinion of this Court.

October 17, 2017

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit

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/s/ Michael E. Gans

6a

**APPENDIX C — MEMORANDUM AND ORDER  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI,  
EASTERN DIVISION, FILED DECEMBER 16, 2016**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 4:15 CV 895 CDP

RICHARD LEE WANN,

*Plaintiff,*

v.

ST. FRANCOIS COUNTY, MISSOURI, *et al.*,

*Defendants.*

December 16, 2016, Decided  
December 16, 2016, Filed

**MEMORANDUM AND ORDER**

**IT IS HEREBY ORDERED** that, for the following reasons, plaintiff Richard Lee Wann's Motion to Correct Clerical Error as to Counts 3-6 in the September 19, 2016, Judgment to Conform to the Memorandum and Order Entered March 7, 2016 [147] is **DENIED**.

Wann first challenges that portion of the September 19 Judgment (ECF #141) that dismissed "with prejudice"

*Appendix C*

Counts 3 through 6 of his complaint against defendants St. Francois County, V. Kenneth Rohrer, Honorable Shawn Ragan McCarver, Edward Pultz, and Brice Sechrest for failure to state a claim. Contrary to Wann’s assertion, this dismissal with prejudice is consistent with my March 7 Memorandum and Order (ECF #83) wherein I addressed the substantive merits of these claims, found them not to state a claim under Fed. R. Civ. P. 12(b)(6), and entered my ruling dismissing them. A dismissal under Rule 12(b)(6) is presumed to be a judgment on the merits made with prejudice unless the Court specifically states otherwise. Fed. R. Civ. P. 41(b); *Orr v. Clements*, 688 F.3d 463, 465 (8th Cir. 2012). *See also Micklus v. Greer*, 705 F.2d 314, 317 (8th Cir. 1983) (“while not explicitly dismissed with prejudice, [the case] was dismissed for failure to state a claim on which relief may be granted, which is a dismissal on the merits.”). Because I did not specifically state otherwise, the dismissal of these claims against these defendants in the March 7 Memorandum and Order was with prejudice.<sup>1</sup>

To the extent Wann challenges that portion of the September 19 Judgment dismissing “without prejudice” Counts 3 through 6 of his complaint against defendants

---

1. This reasoning applies as well to my determination in that Order that Wann did not overcome the various immunity defenses raised in the Rule 12(b)(6) motions to dismiss. *See, e.g., AGI-Bluff Manor, Inc. v. Reagen*, 713 F. Supp. 1535 (W.D. Mo. 1989). *See also Leeuwen v. United States*, 868 F.2d 300 (8th Cir. 1989); *Richardson v. City of St. Louis*, 293 S.W.3d 133 (Mo. Ct. App. 2009) (dismissal with prejudice affirmed where plaintiff failed to plead exception to sovereign immunity).

*Appendix C*

Farmington Missouri Hospital Company, Dr. Ahmed Ardekani, Nicole (Nikki) Rotter MSW, and Americare at Maplebrook Assisted Living, he argues that the March 7 Memorandum and Order instructed that these counts of the complaint were to proceed against these defendants. If one were to look at the status of the case *as it existed on March 7*, Wann's statement is true. But on June 16, 2016, I entered another Memorandum and Order (ECF #130) dismissing these claims against Farmington, Ardekani, and Americare because Wann failed to file a healthcare affidavit as required under Missouri law. I explicitly stated in that Order that the dismissal was "without prejudice." Three months later, Wann himself dismissed his claims against the only remaining defendant, Nicole (Nikki) Rotter, "without prejudice" (ECF #137), which I approved given Rotter's consent to this disposition (ECF #139, #140). There is no clerical error in the Judgment entered September 19, 2016.

/s/ Catherine D. Perry  
CATHERINE D. PERRY  
UNITED STATES DISTRICT  
JUDGE

Dated this 16th day of December, 2016.

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**APPENDIX D — JUDGMENT OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF MISSOURI, EASTERN DIVISION,  
FILED SEPTEMBER 19, 2016**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 4:15 CV 895 CDP

RICHARD LEE WANN,

*Plaintiff,*

v.

NICOLE (NIKKI) ROTTER, MSW,

*Defendant.*

**JUDGMENT**

In accordance with the Memorandum and Order entered March 7, 2016; the Memorandum and Order entered June 16, 2016; and the Order entered September 19, 2016,

**IT IS HEREBY ORDERED AND ADJUDGED** that Count 7 of plaintiff Richard Lee Wann's complaint is dismissed against all defendants without prejudice for lack of subject-matter jurisdiction.

*Appendix D*

**IT IS FURTHER ORDERED AND ADJUDGED** that Counts 1 and 2 of plaintiff's complaint are dismissed with prejudice against all defendants for failure to state a claim.

**IT IS FURTHER ORDERED AND ADJUDGED** that Counts 3 through 6 of plaintiff's complaint are dismissed with prejudice against defendants St. Francois County, V. Kenneth Rohrer, Honorable Shawn Ragan McCarver, Edward Pultz, and Brice Sechrest for failure to state a claim.

**IT IS FURTHER ORDERED AND ADJUDGED** that Counts 3 through 6 of plaintiff's complaint are dismissed without prejudice against defendants Farmington Missouri Hospital Company, Dr. Ahmed Ardekani, Nicole (Nikki) Rotter MSW, and Americare at Maplebrook Assisted Living.

/s/ Catherine D. Perry \_\_\_\_\_  
CATHERINE D. PERRY  
UNITED STATES DISTRICT  
JUDGE

Dated this 19th day of September, 2016.

**APPENDIX E — MEMORANDUM AND ORDER  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI,  
EASTERN DIVISION, FILED JUNE 16, 2016**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

June 16, 2016, Decided  
June 16, 2016, Filed

No. 4:15 CV 895 CDP

RICHARD LEE WANN,

*Plaintiff,*

v.

ST. FRANCOIS COUNTY, MISSOURI, *et al.*,

*Defendants.*

**MEMORANDUM AND ORDER**

Plaintiff asks me to reconsider my May 2, 2016, Order wherein I struck his proposed “First Amended Verified Complaint” because he failed to seek leave to file it as instructed and because the proposed amended complaint added back in defendants and claims that were previously dismissed with prejudice. (Order, ECF 120.) I have reviewed the contentions raised in plaintiff’s motion to reconsider and am not persuaded that I erred

*Appendix E*

in my decision to strike his proposed amended complaint. Most significantly, the “additional facts” that plaintiff claims provide the bases for his amended complaint all address claims and defendants that, as indicated in my May 2 Order, were previously dismissed with prejudice in my Memorandum and Order entered March 7, 2016. Plaintiff’s recitation of additional facts does not resurrect claims that were previously dismissed on their merits for failure to state a claim. *See Rodgers v. University of Mo. Bd. of Curators*, 56 F. Supp. 3d 1037 (E.D. Mo. 2014) (Rule 12(b)(6) dismissal for failure to state a claim is a dismissal with prejudice on the merits); *see also Carter v. Money Tree Co.*, 532 F.2d 113 (8th Cir. 1976) (dismissal for failure to state a claim is *res judicata* to claims plaintiff was attempting to state).

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s Motion to Reconsider the Striking of his First Amended Petition and for Leave to File First Amended Petition [125] is **DENIED**.

/s/ Catherine D. Perry  
CATHERINE D. PERRY  
UNITED STATES DISTRICT  
JUDGE

Dated this 16th day of June, 2016.

**APPENDIX F — MOTION OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF MISSOURI, FILED MAY 3, 2016**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

Case No. 4:15-cv-00895

RICHARD LEE WANN, AN INDIVIDUAL,

*Plaintiff,*

vs.

ST. FRANCOIS COUNTY, MISSOURI,

and

V. KENNETH ROHRER, AN INDIVIDUAL, ST.  
FRANCOIS COUNTY PUBLIC ADMINISTRATOR,  
AND FORMER TEMPORARY GUARDIAN AD  
LITEM OF RICHARD LEE WANN,

and

EDWARD PULTZ, AN INDIVIDUAL, AND  
ATTORNEY FOR PUBLIC ADMINISTRATOR OF V.  
KENNETH ROHRER,

and

BRICE SECHREST, AN INDIVIDUAL, AND  
FORMER ATTORNEY FOR RICHARD LEE WANN,

14a

*Appendix F*

and

FARMINTON MISSOURI HOSPITAL CO., LLC,  
A MISSOURI DOMESTIC LIMITED  
LIABILITY COMPANY,

and

AHMAD ARDEKANI, M.D., AN INDIVIDUAL,

and

NICOLE (NIKKI) ROTTER, MSW, AN  
INDIVIDUAL,

and

AMERICARE AT MAPLEBROOK ASSISTED  
LIVING, LLC, A MISSOURI DOMESTIC LIMITED  
LIABILITY COMPANY,

and

DOES 1-50,

*Defendants.*

*Appendix F*

**MOTION TO RECONSIDER THE STRIKING  
OF PLAINTIFF'S FIRST AMENDED PETITION  
AND FOR LEAVE TO FILE FIRST  
AMENDED PETITION**

COMES NOW the Plaintiff in the above styled cause and the Court reconsider the decision striking the plaintiff's First Amended Petition and grant the plaintiff leave to file the First Amended Petition.

First: FRCP Rule 15(a)(2)states in relevant part:

“(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The Court should freely give leave when justice so requires.”

U.S. Supreme Court case *Foman v Davis*, 371 U.S. 178 (1962) states at 182 in relevant part:

“Rule 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is to be heeded. See generally, 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments, previously

*Appendix F*

allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc – the leave sought should, as the rules require, be ‘freely given.’ Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.”

The Eight Circuit recently cited FRCP Rule 15(a)(2) and its limits in the unpublished decision of *Kozlov v. Associated Wholesale Grocers, Inc.*, Nos. 15-1098, 15-1100, 15-1101. (Decided 3/23/2016) at page 16 as follows:

“Federal Rule of Civil Procedure 15(a) states, “The Court should freely give leave [to amend a complaint] when justice so requires. “ Fed. R. Civ. P. 15(a)(2). However, “[t]he policy favoring liberal allowance of amendments does not mean that the right to amend is absolute. “*Thompson-El v Jones*, 876 F.2d 66,67 (8<sup>th</sup> Cir. 1989). A motion to amend should be denied if the plaintiff is “guilty of undue delay, bad faith, dilatory motive, or if permission to amend would duly prejudice the opposing party. “*Williams v Little Rock Mun. Water Works*, 21 F. 3d 218, 224 (8<sup>th</sup> Cir. 1984).”

*Appendix F*

Second: The following additional facts are included in the First Amended Petition:

1. Darlene Wann admitted communicating with her cousin, Judge McCarver, about Richard Lee Wann;
2. Rohrer and St. Francois County have insurance coverage in one or more form to cover wrongful conduct in Rohrer's office with a a Million and a Half bond through Ohio Casualty Insurance Company.
3. Rohrer actions that were done in bad faith or with malice included:
  - a. Working with MARMC and Americare to get information on Wann's health, medication and assets before he filed a petition for emergency guardianship and conservatorship.
  - b. Telling Wann's children it was an emergency and he was the best qualified to direct the events and invest Wann's assets.
  - c. Refusing to allow Wann's children access to Wann's health records.
  - d. Insisting on third and fourth opinions when medical staff at MARMC and BJC St. Louis cleared Wann of cancer.

*Appendix F*

- e. Rohrer insisting that he calls all the shots and that the Wann's children should mind their own business.
- f. In the summer of 2013, after Rohrer's appointment as emergency guardian and conservator, the keys to Wann's safety deposit box and other remaining financial data were given to Rohrer
- g. No one except Richard Wann was authorized to get into the box
- h. Rohrer got into the box and removed all the contents. There were more than 90 savings bonds in the box. Rohrer inventoried most of the bonds, but kept four, which had a maturity value of Thirty Thousand Dollars (\$30,000).
- i. Rohrer never accounted for the four bonds he took.
- J. Meeting with Wann and friends of his, Rohrer showed them Wann's assets and when Wann inquired Rohrer stated it was none of his business. Rohrer did this numerous times in an effort to get Wann to lash out at him.
- k. When Wann starts hiding, flushing and throwing away his medications then his condition starts improving.

*Appendix F*

- l. When the psychiatrist, Dr. Guiley, remarked how much Wann had improved and he cut his medication and wanted to move him to assisted living, Rohrer opposes vigorously and only allowed it by imposing a lockdown restrictions and provisions.
- m. When the psychiatrist Dr. Guiley stopped all medication and wanted to send Wann home, Rohrer stopped it, telling Dr. Gurley “I call the shots and Wann does not go home unless I allow it.”
- n. Rohrer had Wann taken to health care providers looking for an opinion favoring incarceration.
- o. In the summer of 2013, Rohrer used Wann’s assets to hire and pay Pultz and Sechrest to keep Wann incarcerated.
- p. In the fall of 2014, Wann obtained documentation to prove the theft of the bonds.

Wherefore the Petitioner request leave to file First Amended Verified Petition

20a

*Appendix F*

Respectfully submitted,  
Legacy Law, LLC

/s/

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Stephen C. Banton, MBE#22693  
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**APPENDIX G — ORDER OF THE UNITED  
STATES DISTRICT COURT EASTERN DISTRICT  
OF MISSOURI EASTERN DIVISION,  
FILED MAY 2, 2016**

UNITED STATES DISTRICT COURT EASTERN  
DISTRICT OF MISSOURI EASTERN DIVISION

No. 4:15CV895 CDP

RICHARD LEE WANN,

*Plaintiff,*

v.

ST. FRANCOIS COUNTY, MISSOURI, *ET AL.*,

*Defendants.*

**ORDER**

The Court conducted a scheduling conference with all counsel on April 18, and thereafter entered an Initial Scheduling Order. That Order specifically provided:

1. Plaintiff shall respond to all pending motions to dismiss no later than **April 28, 2016**. If plaintiff seeks leave to amend his complaint to cure any defects alleged in the pending motions, plaintiff must file a motion to amend, along with the proposed amended complaint, no later than April 28, 2016. Defendants' reply briefs must be filed no later than May 9, 2016.

Plaintiff's counsel filed certain memoranda opposing the pending motions to dismiss on April 28, as required by the Order, but he also filed what was titled "First Amended

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Verified Complaint.” (Docket entry # 118.) That document was not accompanied by any motion to amend. Moreover, it added back in defendants and claims that were previously dismissed with prejudice by my Order of March 7, 2016.

(Docket entry # 83.)

My Order regarding amendment set a specific requirement that a motion be filed with any proposed amended complaint. While I understand that plaintiff’s counsel disagrees with my Orders in this case, his disagreement does not allow him to ignore or violate the Orders. I also note that the proposed amendment does not attempt to cure any of the defects raised by the currently pending motions to dismiss. I will therefore strike the amended complaint, and will consider the motions to dismiss directed to the original complaint. Defendants’ reply briefs remain due on May 9, 2016, as previously ordered.

Also, as noted above, plaintiff’s counsel filed memoranda opposing the motions to dismiss. One of plaintiff’s responses to the motions (“Plaintiff Richard Lee Wann’s Response and Opposition to Americare Motion to Dismiss for failure to File a Healthcare Affidavit in Compliance with Mo. Rev. Stat. § 538.22”) appears to have been filed twice, as Docket entry# 114 and again as Docket entry # 117. Docket entry # 114 was docketed as responding to Docket entry # 101 ; but Docket entry# 101 is the motion filed by defendant Ahmad Ardekani, while plaintiff’s response is titled as a response to defendant Americare’s motion. In both Docket entries # 114 and # 117, the document appears to be missing one or more pages, as its first page ends in what appears to be the

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middle of a sentence, and counsel has not signed the actual response itself, although he did sign the certificate of service. If this was a filing error, plaintiff is granted leave to file a corrected copy of this document. Additionally, it does not appear that plaintiff filed a response to Defendant Ahmad Ardekani's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Docket entry # 99). Because it appears that this was also a filing error (since Docket entry # 114 was filed as linking to Docket entry # 99), I will also grant leave for plaintiff to correct this filing error.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's "First Amended Verified Complaint" [118] is stricken, because plaintiff did not seek leave to file it.

**IT IS FURTHER ORDERED** that plaintiff is granted leave to file corrected copies of his Response and Opposition to Americare Motion to Dismiss for Failure to File a Healthcare Affidavit in Compliance with Mo. Rev. Stat. § 538.22 and of his Response to Defendant Ardekani's Rule 12(b)(6) Motion to Dismiss (docket entry 99). **Any corrected copies of these documents shall be filed not later than 12:00 noon on Wednesday, May 4, 2016.**

/s/  
CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of May, 2016.

**APPENDIX H — JUDGMENT OF THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH  
CIRCUIT, FILED MAY 2, 2016**

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No: 16-1779

RICHARD LEE WANN,

*Plaintiff-Appellant,*

v.

ST. FRANCOIS COUNTY, MISSOURI; V. KENNETH  
ROHRER, AN INDIVIDUAL, ST. FRANCOIS  
COUNTY PUBLIC ADMINISTRATOR, AND  
FORMER TEMPORARY GUARDIAN AD LITEM  
OF RICHARD LEE WANN; EDWARD PULTZ, AN  
INDIVIDUAL, AND ATTORNEY FOR PUBLIC  
ADMINISTRATOR V. KENNETH ROHRER;  
BRICE REED SECHREST, IN INDIVIDUAL, AND  
FORMER ATTORNEY FOR RICHARD LEE WANN;  
SHAWN RAGAN MCCARVER, AN INDIVIDUAL,  
AND ASSOCIATE JUDGE FOR THE CIRCUIT  
COURT OF ST. FRANCOIS COUNTY, MISSOURI,  
PROBATE DIVISION; FARMINGTON MISSOURI  
HOSPITAL COMPANY, LLC, A MISSOURI  
DOMESTIC LIMITED LIABILITY COMPANY;  
AHMAD ARDEKANI , M.D., AN INDIVIDUAL;  
NICOLE ROTTER, MSW, AN INDIVIDUAL;  
AMERICARE AT MAPLEBROOK ASSISTED

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*Appendix H*

LIVING, LLC, A MISSOURI DOMESTIC LIMITED  
LIABILITY COMPANY,

*Defendants-Appellees.*

Appeal from U.S. District Court for the Eastern  
District of Missouri - St. Louis  
(4:15-cv-00895-CDP)

**JUDGMENT**

Before WOLLMAN, BOWMAN and COLLOTON, Circuit  
Judges.

The court has carefully reviewed the original file of  
the United States District Court and orders that this  
appeal be dismissed for lack of jurisdiction.

May 02, 2016

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**APPENDIX I — DOCKET TEXT ORDER, DOC. 87,  
DATED MARCH 15, 2016**

Docket Text ORDER: Re: 86 MOTION for Leave to file 1st amended petition;

ORDERED DENIED without prejudice as plaintiff has not attached a proposed amended complaint to the motion; to the extent plaintiffs “response” 85 seeks clarification of the previous order, the request is denied as the order is self-explanatory and clarification should not be necessary. Signed by District Judge Catherine D. Perry on 3/15/16. (CDP) (Entered: 03/15/2016)

**APPENDIX J — MEMORANDUM AND ORDER  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI,  
EASTERN DIVISION, FILED MARCH 7, 2016**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 4:15CV895 CDP

RICHARD LEE WANN,

*Plaintiff,*

v.

ST. FRANCOIS COUNTY, MISSOURI, *et al.*,

*Defendants.*

March 7, 2016, Decided

March 7, 2016, Filed

**MEMORANDUM AND ORDER**

Plaintiff Richard Lee Wann brings this action against state and private actors alleging that he was unlawfully confined at healthcare facilities and was involuntarily administered psychotropic medications so that he would be rendered incompetent and in need of a guardian and/or conservator *ad litem*. Wann contends that the ultimate appointment of the public administrator as

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guardian/conservator *ad litem* perpetuated this unlawful conduct, which in turn caused him physical, emotional, and economic injuries, including the reduction of his estate. In his complaint, Wann brings claims under 42 U.S.C. §§ 1983 and 1985(2), as well as a number of claims under Missouri state law. He names as defendants St. Francois County, Public Administrator V. Kenneth Rohrer, Edward Pultz (an attorney for Rohrer), Brice Reed Sechrest (an attorney once appointed to represent plaintiff), Judge Shawn Ragan McCarver, Farmington Missouri Hospital Company, Dr. Ahmad Ardekani, Social Worker Nicole Rotter, and Americare at Maplebrook Assisted Living.

I conclude that Wann has adequately stated claims against defendants Dr. Ardekani, MSW Rotter, Farmington (as owner of Mineral Area Regional Medical Center), and Americare (which operated The Arbors) for unlawful imprisonment (Counts 3 and 4) and for intentional and negligent infliction of emotional distress (Counts 5 and 6). All other claims and all other defendants will be dismissed for various legal reasons as discussed below.

*Appendix J***BACKGROUND<sup>1</sup>**

On May 3, 2013, Wann was admitted to Mineral Area Regional Medical Center (MARMC), which is owned by defendant Farmington Missouri Hospital Company, after falling at his home. He was not released from MARMC after being treated, however, but instead was admitted to Behavioral Health in MARMC's geriatric ward and was given psychotropic medications as ordered by defendant Dr. Ahmad Ardekani. He alleges that as a result he experienced hallucinations and confusion. Dr. Ardekani and defendant MSW Nikki Rotter participated in Wann's care while he was admitted to MARMC's geriatric ward. During this admission, MSW Rotter noted in Wann's medical record that he had had a major decline in life skills and could not reside alone because of his lack of cognitive abilities.

On May 16, MSW Rotter sent Wann's information to the St. Francois County Public Administrator (PA) to begin guardianship and/or conservatorship

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1. For purposes of this Memorandum and Order, the Court considers the allegations of plaintiff's complaint and also takes judicial notice of the public record in the case of *In the Matter of Richard Lee Wann*, No. 13SF-PR00115, Circuit Court of St. Francois County, Missouri, Probate Division. I may take judicial notice of public records and consider them on a motion to dismiss. *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003). The parties have provided the Court with copies of several documents from Wann's probate case, and I have reviewed the proceedings as documented at <http://www.courts.mo.gov/casenet> (last visited Dec. 8, 2015). To the extent Wann and several defendants request that I take judicial notice of this public record [ECF #36, #53], those requests will be granted.

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proceedings. Although Wann was scheduled to be released from MARMC on May 16, Dr. Ardekani and MSW Rotter extended Wann's release date to May 24. On May 17, defendant PA V. Kenneth Rohrer filed a petition in probate court for the emergency appointment of a temporary guardian on behalf of Wann. The petition was accompanied by Dr. Ardekani's deposition. Wann's daughter, Theresa Brown, likewise filed a petition to be appointed as temporary guardian/conservator, to which Wann's son consented. The probate court appointed defendant Brice Sechrest as counsel for Wann.

In the meanwhile, Dr. Ardekani and MSW Rotter extended Wann's MARMC release date from May 24 to May 30. They later extended the release date to June 6. On June 4, however, Wann was transferred to another care facility, The Arbors, whereupon he continued to receive psychotropic medications.

On June 10, the probate court held a hearing on the petitions for temporary guardianship/conservatorship, over which defendant Associate Circuit Judge Shawn Ragan McCarver presided. In addition to PA Rohrer and Theresa Brown, Wann's brother, Robert, appeared at the hearing. As an attorney, Judge McCarver had previously represented Robert in a separate probate matter involving conservatorship and guardianship issues relating to Pearl Eunice Wann, the mother of Robert Wann and Richard Wann, the plaintiff here.<sup>2</sup> Wann avers in his complaint

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2. See *In the Matter of Pearl Eunice Wann*, No. 24P069600996, St. Francois Circuit Court, Probate Division. The public record on <http://www.courts.mo.gov.casenet> shows that the action was filed in January 2000 and remained pending before the probate court until May 2005.

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that he and Robert were adversaries in that action. Judge McCarver is also the cousin of Darlene Wann, Robert's wife.<sup>3</sup>

On June 13, Judge McCarver entered a consent judgment appointing PA Rohrer as temporary guardian *ad litem* over Wann and as temporary conservator *ad litem* over his estate for a thirty-day period. Various other provisions were made in the order, including the payment of fees for attorney Sechrest, the surrender by Theresa Brown of Wann's financial documents, authorization to transfer Wann from MARMC to The Arbors, and making arrangements for Wann to be examined for possible medical and surgical intervention given his diagnosis of colon invasive carcinoma. After being appointed temporary conservator and guardian *ad litem*, PA Rohrer sought and obtained from Judge McCarver several extensions of this appointment through December 2013.

Beginning in August 2013, Theresa Brown sought to modify the terms of the consent judgment and also filed a motion for contempt. Judge McCarver designated the proceeding as adversary and PA Rohrer began propounding discovery requests to Brown. Judge McCarver permitted PA Rohrer to retain attorney Edward Pultz to represent him in the proceedings;

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3. In his complaint, Wann contends that Darlene had previously informed medical staff at MARMC that he had an altered mental state in that he talked about his deceased parents as if they were still alive and talked about a home he did not have. She also reported having observed a tremor in Wann's hands and that his family indicated that he could not be trusted at home alone.

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privately retained counsel, Stephen Banton, entered an appearance on behalf of Wann.<sup>4</sup> On December 17, Judge McCarver struck Banton's entry of appearance and related filings from the record, as well as all of Brown's pleadings. This ruling was later set aside and attorney Banton was permitted to continue as Wann's counsel.

On January 30, 2014, Judge McCarver adopted a stipulated agreement whereby Wann was permitted to return to his private residence. PA Rohrer was continued in his appointment as temporary guardian/conservator *ad litem*, and Judge McCarver thereafter continually granted PA Rohrer's requested extensions of this appointment. On June 10, 2014, PA Rohrer filed a motion to dismiss without prejudice and also moved the court to approve final settlement. In an order dated June 27, Judge McCarver ordered that attorneys' fees, PA Rohrer's fees and expenses, and associated bills be paid from Wann's estate. Rohrer's appointment as temporary guardian was terminated, but he was ordered to continue as temporary conservator to wind up the affairs of the estate.

On July 10, 2014, upon PA Rohrer's request, Judge McCarver dismissed the case without prejudice.

**THE COMPLAINT**

Wann, through his counsel Banton, brings his claims in an extensive fifty-seven-page, seven-count complaint against St. Francois County, PA Rohrer, attorneys Pultz

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4. Banton is Wann's counsel of record in this case.

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and Sechrest, Judge McCarver, Farmington Missouri Hospital Company (as owner of MARMC), Dr. Ardekani, MSW Rotter, and Americare (as operator of The Arbors). All claims are brought against all defendants:

**Count 1:** 42 U.S.C. § 1983 — that the defendants acted in concert under color of state law to cause him to be falsely imprisoned in the MARMC geriatric ward and The Arbors; to be drugged with psychotropic medications without his consent at the MARMC geriatric ward and at The Arbors; to suffer loss of money; and to suffer emotional distress and physical stress. Wann alleges that defendants' conduct violated his First Amendment right to petition the government and access the court; his Fifth Amendment right to due process in his loss of property; his Sixth Amendment right to counsel; and his Fourteenth Amendment right to due process.

**Count 2:** 42 U.S.C. § 1985(2) — that the defendants acted in concert to deny him equal protection of the laws by impeding, hindering, obstructing, or defeating the due course of justice.

**Count 3:** Unlawful Imprisonment

**Count 4:** Unlawful Imprisonment by Chemical Restraint and Battery

**Count 5:** Intentional Infliction of Emotional Distress

**Count 6:** Negligent Infliction of Emotional Distress

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**Count 7:** Declaratory Relief for Fraud on the Court — requesting that Judge McCarver’s decisions in 13SF-PR00115 be declared null and void inasmuch as he lacked jurisdiction over the action.

Wann invokes this Court’s federal question jurisdiction as to Counts 1 and 2 of the complaint. Regarding his state law claims in Counts 3 through 7, Wann invokes diversity jurisdiction under 28 U.S.C. § 1332(a) alleging that he is citizen of California, all defendants are citizens of Missouri, and the amount in controversy exceeds \$75,000.

Defendants’ various motions to dismiss argue that some or all of Wann’s claims should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction. Defendants also argue that some or all of Wann’s claims should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Each of the defendants base their arguments on different theories, which I will discuss in detail below. For the following reasons, the claims raised in Counts 1, 2, and 7 will be dismissed. All remaining claims against defendants St. Francois County, PA Rohrer, attorneys Pultz and Sechrest, and Judge McCarver will also be dismissed. The claims raised in Counts 3 through 6, however, will survive as to defendants Ardekani, Rotter, Farmington, and Americare.

*Appendix J***DISCUSSION****Motions to Dismiss for Lack of Subject-Matter  
Jurisdiction — Rule 12(b)(1)**

All defendants move to dismiss Wann’s complaint under Fed. R. Civ. P. 12(b)(1), arguing that the *Rooker-Feldman* doctrine deprives this Court of subject-matter jurisdiction over the claims.

Under the *Rooker-Feldman* doctrine,<sup>5</sup> lower federal courts lack subject-matter jurisdiction over challenges to state court judgments and are thus barred from hearing claims that “in effect constitute a challenge to a state court decision.” *Ballinger v. Culotta*, 322 F.3d 546, 548 (8th Cir. 2003); *see also Lemonds v. St. Louis Cnty.*, 222 F.3d 488, 492 (8th Cir. 2000). Except for habeas petitions, the United States Supreme Court is the only federal court with jurisdiction to consider the appeal of a state court judgment. *Skit Int’l, Ltd. v. DAC Techs. of Ark., Inc.*, 487 F.3d 1154, 1156 (8th Cir. 2007). This does not mean a district court is deprived of jurisdiction in every case in which a plaintiff seeks a result different from the one it obtained in state court. *Id.* at 1157. “Rather, *Rooker-Feldman* is implicated in that subset of cases where the losing party in a state court action subsequently complains about that judgment and seeks review and rejection of it.” *Id.*

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5. The *Rooker-Feldman* doctrine is derived from two United States Supreme Court cases: *Rooker v. Fidelity Trust Co.* 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

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To assess whether *Rooker-Feldman* applies in a particular case, a federal court must determine whether the claim before it is “inextricably intertwined” with the claim already decided in the state court. *Silverman v. Silverman*, 338 F.3d 886, 893 (8th Cir. 2003). A claim is inextricably intertwined “if it succeeds only to the extent that the state court wrongly decided the issues before it or if the relief requested would effectively reverse the state court decision or void its ruling.” *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1034-35 (8th Cir. 1999). The doctrine does not bar a claim that is “separable from and collateral to the merits of the state-court judgment.” *Id.* at 1034 (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 21, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987) (Brennan, J., concurring)). The doctrine does not bar federal district courts from considering claims “attacking an adverse party’s actions in obtaining and enforcing that [state-court] decision.” *MSK EyEs Ltd. v. Wells Fargo Bank, N.A.*, 546 F.3d 533, 539 (8th Cir. 2008).

If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction.

*Riehm v. Engelking*, 538 F.3d 952, 965 (8th Cir. 2008) (quotation omitted). Under these standards, Counts 1 through 6 of Wann’s complaint are not barred by the

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*Rooker-Feldman* doctrine. Count 7 is barred, however, and will be dismissed.

**Counts 1 through 6**

In Counts 1 through 6 of his complaint, Wann does not ask this Court to decide an issue that was already decided in state court. Nor does he challenge or seek relief from any state court order or judgment. Instead, Wann contends that the defendants' conduct in bringing about state court action was unlawful in itself, causing him injury. The alleged injuries for which Wann seeks redress is not from the state court judgment. Rather, his alleged injuries arose from circumstances separate from the judgment, that is, the allegedly unlawful manner by which the defendants brought about the state court proceedings in the first place. Because Wann challenges the actions of the defendants in Counts 1 through 6, rather than the effect of any state court judgment, *Rooker-Feldman* does not apply to these claims. *See Centres, Inc. v. Town of Brookfield, Wis.*, 148 F.3d 699, 703 (7th Cir. 1998), cited approvingly in *Skit Int'l*, 487 F.3d at 1157.

**Count 7**

In Count 7, however, Wann claims that defendants' actions amounted to fraud upon the probate court, which prevented the court from conducting a fair examination of the proceeding. Wann contends that on account of this fraud, the court, and specifically, Judge McCarver, lacked jurisdiction over the proceeding and that all of the decisions in the case are therefore null and void.

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Wann's complained-of injuries in Count 7 are the state-court orders allegedly procured through fraud. Because Wann complains of the state-court orders themselves and indirectly seeks reversal of those orders through his claim of fraud, the claim is barred by *Rooker-Feldman*. See *Ness v. Gurstel Chargo, P.A.*, 933 F. Supp. 2d 1156, 1163 (D. Minn. 2013) (citing *Fielder*, 188 F.3d at 1035-36; *Moon v. Chicot Cnty. Ark. Legal Assocs.*, 170 Fed. Appx. 988, 989 (8th Cir. 2006)).

Count 7 will therefore be dismissed for lack of subject-matter jurisdiction.

**Motions to Dismiss for Failure to State  
a Claim — Rule 12(b)(6)**

The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the complaint. When considering a Rule 12(b)(6) motion, the court assumes the factual allegations of a complaint are true and construes them in favor of the plaintiff. *Neitzke v. Williams*, 490 U.S. 319, 326-27, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989). Matters of public record referenced in a complaint may be considered by the court in determining a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003); *Deerbrook Pavilion, LLC v. Shalala*, 235 F.3d 1100, 1102 (8th Cir. 2000).

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled

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to relief.” In *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), the Supreme Court clarified that Rule 8(a)(2) requires complaints to contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at 555; accord *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Specifically, to survive a motion to dismiss, a complaint must contain enough factual allegations, accepted as true, to state a claim for relief “that is plausible on its face.” *Twombly*, 550 U.S. at 570. The factual allegations must be sufficient to “raise a right to relief above the speculative level.” *Parkhurst v. Tabor*, 569 F.3d 861, 865 (8th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555). The issue in determining a Rule 12(b)(6) motion is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of the claim. See *Skinner v. Switzer*, 562 U.S. 521, 529-30, 131 S. Ct. 1289, 179 L. Ed. 2d 233 (2011) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974)).

Against this backdrop, I turn to defendants’ arguments that the remaining counts of Wann’s complaint fail to state a claim upon which relief can be granted. Because defendants raise separate legal theories to support their respective arguments, I address the claims of each defendant, individually, below.

*Appendix J***Defendant St. Francois County:****Count 1 – 42 U.S.C. § 1983**

To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

A governmental entity cannot be held vicariously liable for its agent's acts under § 1983. *Brockington v. City of Sherwood, Ark.*, 503 F.3d 667, 674 (8th Cir. 2007) (citing *Monell v. Department of Social Servs.*, 436 U.S. 658, 691, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). Nor can it be liable under § 1983 “unless *deliberate* action attributable to the municipality itself is the ‘moving force’ behind the plaintiff’s deprivation of federal rights.” *Board of Cnty. Com’rs of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 400, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997) (quoting *Monell*, 436 U.S. at 694) (emphasis in *Brown*). To recover from a governmental entity under § 1983, a plaintiff must identify a governmental policy or custom that caused his injury. *Brockinton*, 503 F.3d at 674.

A governmental policy involves a deliberate choice to follow a course of action . . . made from among various alternatives by an official who has the final authority to establish governmental policy. A governmental custom involves a pattern of persistent and widespread

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... practices which bec[o]me so permanent and well settled as to have the effect and force of law.

*Id.* (internal quotation marks and citations omitted) (alterations in *Brockington*). A plaintiff's failure to include any allegations, reference, or language from which one could begin to draw an inference that the conduct complained of resulted from an unconstitutional policy or custom of the governmental entity renders the complaint deficient as to that entity. *Crumpley-Patterson v. Trinity Lutheran Hosp.*, 388 F.3d 588, 591 (8th Cir. 2004).

The only County policy arguably identified in Wann's complaint is its "see[k]ing of guardianships over the persons and conservatorships over the property of the estates of persons in hospitals." (Compl., ECF #1 at pp. 30-31.) Wann alleges no facts in his complaint, however, showing that such a policy is unconstitutional. While Wann claims that he was personally injured by the alleged unconstitutional acts of a County employee, this alone does not permit an inference of municipal culpability and causation. *Brown*, 520 U.S. at 406-07. Instead, a plaintiff seeking to establish municipal liability on the theory that a facially lawful municipal action has led an employee to violate his rights must demonstrate that the municipal action was taken with deliberate indifference as to its known or obvious consequences. *Id.* at 407. Wann makes no such allegation against St. Francois County in his complaint.

Count 1 will be dismissed against St. Francois County for failure to state a claim.

*Appendix J***Count 2 – 42 U.S.C. § 1985(2)**

Wann brings Count 2 under the second portion of 42 U.S.C. § 1985(2), which provides for a person to recover if:

two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws[.]

Because this portion of the statute contains language requiring that the conspirators' actions be motivated by an intent to deprive their victims of the equal protection of the laws, "there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Kush v. Rutledge*, 460 U.S. 719, 725-26, 103 S. Ct. 1483, 75 L. Ed. 2d 413 (1983) (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971)). A complaint that fails to allege race or other class-based hostility fails to state a claim under the second portion of § 1985(2). *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d 1422, 1430 (8th Cir. 1986); *Lamb v. Farmers Ins. Co., Inc.*, 586 F.2d 96, 97 (8th Cir. 1978).

The complaint here is devoid of necessary allegations concerning racial or other class-based hostility and that the defendants conspired against Wann because of his membership in a class defined in an invidiously discriminatory manner. Wann has thus failed to state

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a claim under 42 U.S.C. § 1985(2), and Count 2 will be dismissed in its entirety against all defendants.<sup>6</sup>

**Counts 3 through 6 – State Law Claims**

Under Mo. Rev. Stat. § 537.600, public entities, such as St. Francois County, are entitled to sovereign immunity when they are engaged in governmental functions, unless immunity is waived, abrogated, or modified by statute. *Richardson v. City of St. Louis*, 293 S.W.3d 133, 136-37 (Mo. Ct. App. 2009).

A municipality has sovereign immunity from actions at common law tort in all but four cases: (1) where a plaintiff's injury arises from a public employee's negligent operation of a motor vehicle in the course of his employment (section 537.600.1(1)); (2) where the injury is caused by the dangerous condition of the municipality's property (section 537.600.1(2)); (3) where the injury is caused by the municipality performing a proprietary function as opposed to a governmental function (*State ex rel.*

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6. To the extent Wann argues that the Fourteenth Amendment's Equal Protection Clause recognizes a "class of one," citing *Barstad v. Murray Cnty.*, 420 F.3d 880 (8th Cir. 2005), I note that Count 2 is brought under 42 U.S.C. § 1985(2) and not the Fourteenth Amendment. Nevertheless, Wann does not allege in his complaint that he was treated differently from similarly situated individuals and thus has not stated a viable Fourteenth Amendment equal protection claim. See *Rodgers v. University of Mo. Bd. of Curators*, 56 F. Supp. 3d 1037, 1053-54 (E.D. Mo. 2014); *Karsjens v. Jesson*, 6 F. Supp. 3d 916, 935-36 (D. Minn. 2014).

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*Board of Trustees of the City of North Kansas City Memorial Hospital*, 843 S.W.2d 353, 358 (Mo. banc 1992)); and (4) to the extent the municipality has procured insurance, thereby waiving sovereign immunity up to but not beyond the policy limit and only for acts covered by the policy (section 537.610).

*Bennartz v. City of Columbia*, 300 S.W.3d 251, 259 (Mo. Ct. App. 2009). When bringing claims against a public entity, a plaintiff “bears the burden of pleading with specificity facts giving rise to an exception to sovereign immunity[.]” *Richardson*, 293 S.W.3d at 136-37.

Here, Wann’s complaint does not claim that an exception to sovereign immunity applies in this case, nor does it allege facts giving rise to such an exception. In response to the County’s motion to dismiss, Wann argues that the County failed to aver that it did not have insurance and thereby conceded its waiver of sovereign immunity, as demonstrated by its citation to § 537.610. It is well established in Missouri, however, that sovereign immunity is not an affirmative defense. *Richardson*, 293 S.W.3d at 137. “Accordingly, to state a cause of action sufficient to survive a motion to dismiss on the pleadings, the petition, when viewed in its most favorable light, must plead facts, which if taken as true, establish an exception to the rule of sovereign immunity.” *Id.* (internal citation and quotation marks omitted). Wann has failed to do so here, and his state law claims against St. Francois County will be dismissed for failure to state a claim.

*Appendix J***Defendant Honorable Shawn Ragan McCarver:**

Judges generally have absolute immunity from suits for money damages for their judicial actions. *Mireles v. Waco*, 502 U.S. 9, 9-10, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) (per curiam). This immunity is “from suit, not just from ultimate assessment of damages,” *id.* at 11, and applies to all legal claims challenging judicial acts, including claims brought under 42 U.S.C. §§ 1983 and 1985. *Robinson v. Freeze*, 15 F.3d 107, 108 (8th Cir. 1994); *White v. Bloom*, 621 F.2d 276, 279-80 (8th Cir. 1980). “[I]mmunity applies even when the judge is accused of acting maliciously and corruptly.” *Pierson v. Ray*, 386 U.S. 547, 554, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967); *see also Stump v. Sparkman*, 435 U.S. 349, 356, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). A judge is not immune for actions, however, taken in the complete absence of all jurisdiction. *Mireles*, 502 U.S. at 12; *Martin v. Hendren*, 127 F.3d 720, 721 (8th Cir. 1997). The scope of a judge’s jurisdiction is broadly construed when relating to judicial immunity. *Stump*, 435 U.S. at 356.

Although Wann contends that Judge McCarver’s actions were done in the absence of all jurisdiction and thus that his claims against the judge may proceed, the circumstances of the state court case as alleged in the complaint and as shown by the public record shows that judicial immunity applies to Judge McCarver’s actions. Accordingly, all claims against him will be dismissed.

In his complaint, Wann contends that Judge McCarver’s relationship with Robert Wann — both in his representation of Robert in a prior adversary

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proceeding and as the cousin of Robert's wife, Darlene — required him to recuse himself from presiding over Richard Wann's probate matter given that he learned information about Richard through these relationships, which prejudiced him in the proceeding. Wann contends that these circumstances rendered Judge McCarver disqualified from presiding over the case, thereby requiring him to transfer the matter under Mo. S. Ct. R. 51 for reassignment to another judge. Wann argues that Judge McCarver's failure to transfer the case rendered him without jurisdiction over the probate matter, thereby stripping him of judicial immunity for his actions.

A disqualified judge lacks jurisdiction to rule on any matters that did not precede a proper objection seeking disqualification. *State v. Taylor*, 929 S.W.2d 209, 219 (Mo. banc 1996); *State ex rel. Raack v. Kohn*, 720 S.W.2d 941, 944 (Mo. banc 1986). If a litigant is facing a prejudiced or biased judge, due process permits him to remove the judge. *State v. Nunley*, 923 S.W.2d 911, 918 (Mo. banc 1996); *Thomas v. State*, 808 S.W.2d 364, 367 (Mo. banc 1991).

To disqualify a judge in probate court, Mo. Rev. Stat. § 472.060 requires a party in interest to object in writing with verification by affidavit. The statute provides for the matter to be transferred to another judge upon the filing of such objections. *Id.* If a motion under § 472.060 is in proper form and not waived by delay, “the disqualification is ‘automatic[.]’” *State ex rel. Stephens v. Lamb*, 883 S.W.2d 101, 103 (Mo. Ct. App. 1994) (quoting *Kohn*, 731 S.W.2d at 842). “The exercise of the right to disqualify a judge

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requires strict compliance with the provisions of the rule.” *Whalen, Murphy, Reid, Danis, Garvin & Tobben v. Estate of Roberts*, 711 S.W.2d 587, 591 (Mo. Ct. App. 1986). A probate judge is not disqualified, and thus does not lose jurisdiction, where a party fails to strictly comply with § 472.060, including its requirement to file an affidavit. *Id.* Missouri Supreme Court Rule 51.05 does not apply to matters in probate court unless so ordered by the probate judge. *Id.* Without such an order, a party may not rely on Rule 51.05’s procedures to remove a probate judge. *Id.*

A review of the public record in *In the Matter of Richard Lee Wann* shows that Wann never invoked § 472.060 in the probate court to disqualify Judge McCarver. To the extent Wann argues that his January 2014 petition to the Missouri Court of Appeals for writ of prohibition adequately sought Judge McCarver’s recusal,<sup>7</sup> a review of the petition shows that it did not comply in any respect with § 472.060, including its requirement for verification by affidavit.<sup>8</sup> Because Wann failed to comply with § 472.060, Judge McCarver was never disqualified from the probate proceeding and did not lose jurisdiction over the case.

Wann argues that Judge McCarver was nevertheless subject to mandatory recusal given his relationship

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7. See *State ex rel. Richard Wann v. Shawn McCarver*, No. ED100938, Missouri Court of Appeals, <http://www.courts.mo.gov.casenet>. Wann subsequently withdrew the petition. *Id.*

8. ECF #53-3, Pltf.’s Mot. for Jud. Not. of St. Ct. Proc, Exh. C.

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with Robert and his receipt of information from prior proceedings. The judge is in the best position to determine if recusal is necessary against claims of bias and prejudice inasmuch as such circumstances may vary for different judges within a circuit. *Nunley*, 923 S.W.2d at 917. It is presumed that judges will not undertake to preside over a proceeding in which they cannot be impartial. *State ex rel. Ferguson v. Corrigan*, 959 S.W.2d 113, 116 (Mo. banc 1997). A judge must first determine the recusal issue before a court of appeals will address the merits of the question. *Id.* Nevertheless, a judge's determination of a motion for recusal is itself a judicial act that falls within the protection of absolute judicial immunity. *See Liles v. Reagan*, 804 F.2d 493, 495 (8th Cir. 1986).

In the probate court, Wann never moved for Judge McCarver to recuse himself based on his relationship with Robert or on information he gleaned from previous proceedings. To the extent Wann raised this issue before the court of appeals in his petition for writ of prohibition, he withdrew the petition before any determination. Whether or not Judge McCarver was privy to extraneous information, was biased against Wann, or should have recused himself does not abrogate the immunity absent a lack of jurisdiction. Judicial immunity is not overcome by allegations of bad faith or malice, and applies even when the judge is accused of acting maliciously and corruptly. *Mireles*, 502 U.S. at 11; *Pierson*, 386 U.S. at 554.

Accordingly, because Judge McCarver's challenged actions were judicial in nature and were not taken in the complete absence of all jurisdiction, he is entitled to

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absolute judicial immunity for the claims brought against him in this action. *See Mireles*, 502 U.S. at 11. Wann's complaint is therefore dismissed against Judge McCarver in all respects.

**Defendant V. Kenneth Rohrer:****Count 1 – 42 U.S.C. § 1983**

Absolute quasi-judicial immunity protects officials for acts they are required to do under court order or at a judge's direction. *Robinson v. Freeze*, 15 F.3d 107, 109 (8th Cir. 1994). The order must be related to the judicial function. *Martin*, 127 F.3d at 721.

Wann alleges in his complaint that PA Rohrer unlawfully caused him to be housed at MARMC and The Arbors and unlawfully charged his estate for fees associated with such housing and the costs of guardianship/conservatorship. The complaint and the public records show, however, that PA Rohrer acted only in accordance with judicial decisions regarding Wann's care, including the provision of medical and psychological treatment and the approval of healthcare providers for such treatment. Judicial decisions specifically authorized Wann's residence at The Arbors and ordered Wann's estate to pay for the fees of residential care and the costs associated with guardianship/conservatorship. Judicial decisions also provided that the fees of Wann's own privately retained counsel be paid. In carrying out these judicial decisions, PA Rohrer is protected by quasi-judicial immunity. To the extent Wann contends that PA Rohrer nevertheless *acted*

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unlawfully in carrying out these decisions, my inquiry is controlled by the nature of the function being performed, not the particular act itself. *Martin v. Hendren*, 127 F.3d 720, 722 (8th Cir. 1997). Absolute quasi-judicial immunity would afford only illusory protection if it were lost the moment an officer acted improperly. *Id.*

To the extent Wann contends that PA Rohrer's *initiation* of guardianship proceedings in itself violated his constitutional rights, Rohrer is entitled to qualified immunity. Government officials performing discretionary functions are entitled to qualified immunity unless they violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). "A Rule 12(b)(6) dismissal based on qualified immunity is appropriate 'when the immunity is established on the face of the complaint.'" *Dornheim v. Sholes*, 430 F.3d 919, 926 (8th Cir. 2005) (quoting *Whisman v. Rinehart*, 119 F.3d 1303, 1309 (8th Cir. 1997)).

In bringing guardianship proceedings here, PA Rohrer acted in accordance with Mo. Rev. Stat. § 475.060.2 by promptly petitioning for temporary guardianship based on information provided to him by hospital personnel. Wann presents nothing in his complaint demonstrating that this action was unreasonable or that it violated any constitutional right so sufficiently clear that any reasonable official would understand that he was violating that right. *See McCuen v. Polk Cnty., Iowa*, 893 F.2d 172, 174 (8th Cir. 1990) (citing *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)). Wann's complaint

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alleges, and public records show, that PA Rohrer filed a petition for emergency temporary guardianship one day after MSW Rotter provided information to him regarding the appointment of a guardian, and such petition was accompanied by Dr. Ardekani's deposition. Upon the filing of the petition, Wann's daughter likewise sought appointment as temporary guardian. Within one month of PA Rohrer's initiation of guardianship proceedings, the probate court held a hearing on both Rohrer's and Brown's petitions and entered an order appointing PA Rohrer as temporary guardian.

This information fails to show that PA Rohrer's action in petitioning for temporary guardianship violated any of Wann's clearly established statutory or constitutional rights of which a reasonable person would have known. *Contra Whisman*, 119 F.3d at 1310 (qualified immunity denied to state official where child taken and held with no investigation and state proceedings filed after inordinate delay). Accordingly, PA Rohrer is entitled to qualified immunity for his conduct that occurred before the entry of any court order for which he is not protected by quasi-judicial immunity.

Because the doctrines of absolute quasi-judicial immunity and qualified immunity protect PA Rohrer from Wann's § 1983 claims against him in Count 1 of the complaint, Count 1 will be dismissed as to defendant Rohrer.

*Appendix J***Counts 3 through 6 – State Law Claims<sup>9</sup>**

Court officers whose conduct is intimately associated with the judicial phase of the judicial process are protected by absolute judicial immunity. *White v. Camden Cnty. Sheriff's Dep't*, 106 S.W.3d 626, 633 (Mo. Ct. App. 2003) (quoting *Burns v. Reed*, 500 U.S. 478, 492, 111 S. Ct. 1934, 114 L. Ed. 2d 547 (1991)). “The reasoning for the grant of official judicial immunity to [such] officers executing facially valid court orders is ‘essential if the court’s authority and ability to function are to remain uncompromised.’” *Id.* (quoting *Coverdell v. Department of Social & Health Servs.*, 834 F.2d 758, 765 (9th Cir. 1987)). “[I]t is simply unfair to spare the judges who give orders while punishing the officers who obey them. Denying these officials absolute immunity for their acts would make them a lightning rod for harassing litigation aimed at judicial orders.” *Id.* (internal quotation marks and citation omitted) (alteration in *White*).

As discussed *supra*, PA Rohrer carried out Judge McCarver’s orders by providing Wann with medical and psychological treatment, approving healthcare providers, arranging residential care, and paying for costs associated with guardianship/conservatorship, including attorneys’ fees. To the extent Wann’s state law claims challenge these actions, PA Rohrer is protected by absolute judicial

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9. Invoking this Court’s diversity jurisdiction, Wann brings these claims under Missouri state law. While the analysis is similar to that applied to Wann’s federal claims, I apply Missouri law to these claims. See *Guaranty Trust Co. of N.Y. v. York*, 326 U.S. 99, 111-12, 65 S. Ct. 1464, 89 L. Ed. 2079 (1945).

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immunity. *White*, 106 S.W.3d at 633. To hold otherwise would require court officers enforcing facially valid orders “to act as pseudo-appellate courts scrutinizing the orders of judges.” *Id.* (internal quotation marks and citation omitted). This result is “obviously untenable.” *Id.* (internal quotation marks and citation omitted).<sup>10</sup>

Regarding Wann’s contention that PA Rohrer engaged in unlawful conduct in relation to the *initiation* of guardianship proceedings, Rohrer is entitled to official immunity to the extent Wann claims such conduct was negligent. Official immunity “protects public employees from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts.” *Rhea v. Sapp*, 463 S.W.3d 370, 375-76 (Mo. Ct. App. 2015) (internal quotation marks and citation omitted). The act of determining how or whether a petition for guardianship should be pursued requires a degree of professional judgment. It is not of a clerical nature without regard to judgment or opinion. It is therefore a discretionary act. *See Southers v. City of Farmington*, 263 S.W.3d 603, 610 (Mo. banc 2008) (discretionary versus ministerial acts).

Because PA Rohrer’s act of initiating guardianship proceedings was discretionary, he is entitled to official immunity to the extent Wann claims Rohrer acted negligently in pursuing the action. Count 6 of the

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10. Although Wann argues that the orders purportedly carried out by Rohrer were not valid given Judge McCarver’s lack of jurisdiction over the probate case, I have already rejected this argument.

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complaint, alleging negligent infliction of emotional distress, will therefore be dismissed as to defendant PA Rohrer.

The remaining state law claims allege intentional injurious conduct, and specifically, unlawful imprisonment, unlawful imprisonment by chemical restraint and battery, and intentional infliction of emotional distress. The doctrine of official immunity does not apply to discretionary acts “done in bad faith or with malice.” *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 446 (Mo. banc 1986); *see also Mauzy v. Mexico Sch. Dist. No. 59*, 878 F. Supp. 153, 156 (E.D. Mo. 1995). “The relevant definition of bad faith or malice . . . ordinarily contains a requirement of actual intent to cause injury.” *Twiehaus*, 706 S.W.2d at 447. While wrongful intent must be pleaded, “further inquiry is necessary to determine whether the factual allegations of the pleadings give rise to an inference of bad faith.” *Id.*

A defendant acts with malice when he wantonly does that which a man of reasonable intelligence would know to be contrary to his duty and which he intends to be prejudicial or injurious to another. An act is wanton when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others. . . . [B]ad faith, although not susceptible of concrete definition, embraces more than bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior

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motive or ill will partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another.

*Id.* (internal quotation marks and citations omitted).

Under this standard, the allegations in Wann's complaint fail to state facts from which it could reasonably be inferred that PA Rohrer acted in bad faith or from an improper or wrongful motive by initiating guardianship proceedings. Instead, the complaint alleges only that PA Rohrer petitioned for temporary guardianship based on information provided to him by hospital personnel. Wann presents nothing in his complaint demonstrating that PA Rohrer was directly involved in his alleged unlawful confinement at the hospital, the failure to release Wann from MARMC when originally scheduled, or the administration of psychotropic medication. There are no allegations that PA Rohrer had actual knowledge that the information provided to him for purposes of initiating guardianship proceedings was false or that Wann's mental and physical condition was intentionally manipulated so as to justify such proceedings.

Because Wann's complaint contains no allegation that PA Rohrer acted with malicious motive or purpose or engaged in conscious wrongdoing, Wann's claims of intentional unlawful conduct raised in Counts 3 through 5 fail to state claims against Rohrer that are not barred by the immunity doctrine. The state law claims asserted in Counts 3 through 5 of the complaint are therefore dismissed against defendant PA Rohrer.

*Appendix J***Defendants Edward Pultz and Brice Sechrest:****Count 1 - 42 U.S.C. § 1983**

Both Pultz and Sechrest were private attorneys either retained or appointed to represent PA Rohrer and Wann, respectively, in the proceedings before the probate court.<sup>11</sup> “The conduct of counsel, either retained or appointed, in representing clients, does not constitute action under color of state law for purposes of section 1983 violations.” *Holbird v. Armstrong-Wright*, 949 F.2d 1019, 1020 (8th Cir. 1991) (citing *Harkins v. Eldredge*, 505 F.2d 802, 803 (8th Cir. 1974) (per curiam); *Eling v. Jones*, 797 F.2d 697, 699 (8th Cir. 1986)). Nor is a mere allusion to a conspiracy between private counsel and state actors sufficient to state a § 1983 claim. *Id.* Instead, a plaintiff seeking to hold such private persons liable under § 1983 must allege, at the very least, that there was a mutual understanding, or meeting of the minds, between these attorneys and the state actors regarding the violation of plaintiff’s constitutional rights. *Miller v. Compton*, 122 F.3d 1094, 1098 (8th Cir. 1997); *Smith v. Bacon*, 699 F.2d

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11. Wann identifies Pultz in his complaint as an individual employed by the County (Compl., ECF #1 at para. 122), but appears to later concede to defendants’ averment that Pultz is a private actor. (See Defts.’ Memo. in Supp. of Joint Mot. to Dis., ECF #37 at p.6; Pltf.’s Oppos., ECF #52 at p. 50.) Regardless, as discussed *infra*, whether Pultz is considered to be a state or private actor, Wann’s complaint contains no factual allegations showing that Pultz could be liable to Wann for any of the alleged unlawful conduct. See *Iqbal*, 556 U.S. at 676 (in a § 1983 action, “a plaintiff must plead that each Government-official defendant, *through the official’s own individual actions*, has violated the Constitution.”) (emphasis added).

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434, 436 (8th Cir. 1983) (per curiam) (allegations must at least include that “the defendants had directed themselves toward an unconstitutional action by virtue of a mutual understanding” and provide some facts suggesting a meeting of the minds).

Here, other than claiming that Pultz and Sechrest represented parties in the guardianship proceedings, Wann fails to allege any facts suggesting that Pultz or Sechrest and any state actor had a meeting of the minds where they jointly agreed to violate Wann’s constitutional rights. Count 1 will be dismissed as to Pultz and Sechrest for failure to state a claim.

**Counts 3 through 6 – State Law Claims****A. Pultz**

Wann filed an extensive complaint in this action, detailing with particularity the actions he claimed caused his injuries and the dates upon which such actions occurred. In this extensive complaint, he specifically references defendant Pultz on two occasions. First, Wann generally identifies Pultz as “the attorney for the Public Administrator V. Kenneth Rohrer in the case of *In the Matter of Richard Lee Wann*.” (Compl. at para. 4.) Wann later generally refers to Pultz as a County employee. (*Id.* at para. 122.) In neither instance does Wann identify any specific action taken by Pultz. Although within each count of the complaint, Wann generally refers to all defendants as acting “in concert” to deprive him of his constitutional rights and injure him under state law, he does not allege

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that Pultz took any specific action in relation to any of the claims.

To survive a motion to dismiss, the complaint must contain “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. Instead, it must contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (internal quotation marks and citation omitted). Where well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has not “show[n] . . . that the pleader is entitled to relief.” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)) (alteration in *Iqbal*).

Here, Wann’s complaint does not allege facts that suggest that Pultz engaged in any wrongful conduct. Instead, Wann claims only that Pultz was a County employee<sup>12</sup> and acted as Rohrer’s attorney. There is no illegal conduct in these actions. Although Wann generally alleges that Pultz acted “in concert” with the other defendants to engage in unlawful conduct, he does not allege any facts showing that Pultz was a part of any agreement to engage in such conduct against him or to deprive him of any right. This lack of an agreement would prohibit a reasonable jury from finding that Pultz participated in any conspiracy. *See Marti v. City of*

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12. *But see* n.11, *supra*.

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*Maplewood, Mo.*, 57 F.3d 680, 685 (8th Cir. 1995) (lack of showing an agreement prevents plaintiff from recovering on state law conspiracy claim). Wann’s mere inclusion of the words “acted in concert” in his complaint is insufficient to state allegations of common law conspiracy. *See Ramsay v. Vogel*, 970 F.2d 471, 475 (8th Cir. 1992); *see also Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1063-64 (8th Cir. 2005) (allusion to meeting of the minds without any specific allegations of collusion does not survive motion to dismiss). To the extent, therefore, that Wann claims Pultz conspired with others to cause injury to him, he has failed to state a claim against Pultz.

Counts 3 through 6 will be dismissed against defendant Pultz for failure to state a claim upon which relief can be granted.

**B. Sechrest**

Wann’s state law claims against Sechrest suffer the same infirmities. In his complaint, Wann specifically references Sechrest on three occasions: first, that he was appointed by Judge McCarver to represent Wann (Compl. at para. 5); second, that PA Rohrer sent a letter to The Arbors in November 2013 stating that he agreed with the medication “suggested by Mr. Sechrest who was . . . not a doctor” (*id.* at para. 113); and that “Sechrest worked against the interests of Richard” (*id.* at para. 122). While Wann thereafter generally refers to all defendants acting “in concert” to deprive him of his constitutional rights or injure him under state law, he identifies no specific action

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by Sechrest in relation to any of the claims raised in the complaint. Nor does he sufficiently allege facts showing that Sechrest was a part of any agreement to engage in illegal conduct against him or deprive him of any right.

Counts 3 through 6 will be dismissed against defendant Sechrest for failure to state a claim upon which relief can be granted.

**Defendants Farmington Missouri Hospital Co., LLC,  
and Americare at Maplebrook Assisted Living, LLC:**

**Count 1 – 42 U.S.C. § 1983**

Wann contends in his complaint that Farmington either owns or controls MARMC and therefore is liable for MARMC's alleged unlawful conduct. Likewise, Wann contends that Americare controlled The Arbors and thus is liable for The Arbors' conduct. Neither defendant is a government actor.

To hold a private party liable under § 1983, a plaintiff must establish not only that the private actor caused a deprivation of constitutional rights, but that he willfully participated with state officials and reached a mutual understanding concerning the unlawful objective of a conspiracy. *Dossett v. First State Bank*, 399 F.3d 940, 951 (8th Cir. 2005) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)). A private corporation acting under color of state law will only be held liable under § 1983 for its own unconstitutional policies. *Sanders v. Sears, Roebuck & Co.*, 984 F.2d 972,

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975 (8th Cir. 1993) (citing *Monell*, 436 U.S. at 690). “The proper test is whether there is a policy, custom or action by those who represent official policy that inflicts injury actionable under § 1983.” *Id.* A plaintiff’s failure to plead that a private corporation has such policy or custom precludes relief against the corporation under § 1983. *Id.*

Here, Wann’s complaint does not allege that either Farmington or Americare had a policy or custom of depriving individuals of their constitutional rights. In addition, because claims of *respondeat superior* are not cognizable in a § 1983 action, Farmington’s purported employment of Dr. Ardekani and MSW Rotter does not make it liable under § 1983. *Sanders*, 984 F.2d at 975. Finally, an allegation that defendants submitted fraudulent bills to Medicare for Wann’s care does not render them state actors for purposes of § 1983.

Count 1 will be dismissed as to defendants Farmington and Americare for failure to state a claim.

**Counts 3 through 6 – State Law Claims**

Farmington and Americare seek to dismiss Counts 3 and 4 only on the basis that this Court lacks subject-matter jurisdiction under the *Rooker-Feldman* doctrine. I have previously determined *Rooker-Feldman* not to apply to the claims raised in Counts 3 and 4, so the defendants’ motion to dismiss on this basis will be denied. Farmington and Americare raise no other ground upon which they seek to dismiss Counts 3 and 4 of the complaint. These counts will therefore proceed as to these defendants.

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With respect to Counts 5 and 6, that is, intentional infliction of emotional distress and negligent infliction of emotional distress, respectively, Farmington and Americare argue that Wann fails to plead all the essential elements of the claims and thus fails to state a claim upon which relief can be granted. I disagree.

To properly plead negligent or intentional infliction of emotional distress, a plaintiff must allege, *inter alia*, that the emotional distress is medically diagnosable and is severe enough to be medically significant. *Ford v. Aldi, Inc.*, 832 S.W.2d 1, 2 (Mo. Ct. App. 1992) (negligent infliction of emotional distress); *Snelling v. City of St. Louis, Dep't of Pub. Utilities-Water Div.*, 897 S.W.2d 642, 646 (Mo. Ct. App. 1995) (intentional infliction of emotional distress). Defendants argue that Wann's claims in Counts 5 and 6 fail because he did not plead this required element. In his complaint, however, Wann alleges that he was involuntary medicated with psychotropic medications that caused him to experience hallucinations and to be diagnosed as having an altered mental state, and that the continued administration of such medication was done for the purpose of maintaining his altered mental state so that he would remain subject to residential care through the guardianship/conservatorship proceedings. At this stage of the case, these alleged facts are sufficient to show that Wann had a medically diagnosable emotional condition that was medically significant and caused by the conduct alleged.

Farmington's and Americare's motion to dismiss will be denied as to Counts 5 and 6 of the complaint.

*Appendix J***Defendants Dr. Ardekani and MSW Rotter:**

In his complaint, Wann alleges that Dr. Ardekani and MSW Rotter extended his MARMC release date so that guardianship proceedings could be instituted and, further, that they provided information to PA Rohrer so that a guardian could be appointed for Wann. Wann further claims that Dr. Ardekani authorized the administration of psychotropic medications without his consent. Wann contends that the continuous administration of these medications and his retention at MARMC was done to incapacitate him so that guardianship proceedings could be brought.

**Count 1 – 42 U.S.C. § 1983**

As with attorneys Pultz and Sechrest, Wann fails to allege any facts suggesting that these private persons and any state actor had a meeting of the minds where they jointly agreed to violate Wann's constitutional rights. These private persons therefore cannot be held liable under § 1983, and Count 1 of Wann's complaint will be dismissed as to them for failure to state a claim. *Mershon v. Beasley*, 994 F.2d 449, 451 (8th Cir. 1993).

**Counts 3 through 6 – State Law Claims****A. Dr. Ardekani**

As bases for dismissing the state law claims raised in Counts 3 through 6, Dr. Ardekani relies on the same arguments made by defendants Farmington and

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Americare, that is, that the *Rooker-Feldman* doctrine bars the claims raised in Counts 3 and 4, and that Wann failed to allege all elements of the claims raised in Counts 5 and 6. For the reasons stated above with respect to Farmington's and Americare's arguments, these arguments likewise fail with regard to Dr. Ardekani. Wann's state law claims will therefore proceed against Dr. Ardekani.

**B. MSW Rotter**

To the extent MSW Rotter likewise relies on Farmington's and Americare's arguments to dismiss Counts 3 through 6, her motion to dismiss will be denied. With respect to Count 4, however, Rotter raises an additional argument — that it fails to state a claim against her *if* it is brought as a medical malpractice claim.

In Count 4, Wann claims that he was subject to unlawful imprisonment by chemical restraint and battery, claiming that he was given psychotropic drugs without his consent for the purpose of keeping him confined to residential care. Wann does not allege any elements of medical malpractice under Missouri law, *see, e.g., Newland v. Azan*, 957 S.W.2d 377, 378 (Mo. Ct. App. 1997), and indeed avers in response to MSW Rotter's argument that "Count IV is not for Medical Malpractice." (Pltf.'s Oppos., ECF #52 at p. 54.) Count 4 of Wann's complaint is not a claim for medical malpractice, and MSW Rotter's motion to dismiss on this basis will be denied.

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**CONCLUSION**

To Summarize, the following claims will go forward against defendants Dr. Ardekani, MSW Rotter, Farmington and Americare:

Count 3 (unlawful imprisonment), Count 4 (unlawful imprisonment by chemical restraint and battery), Count 5 (intentional infliction of emotional distress), and Count 6 (negligent infliction of emotional distress). All other claims will be dismissed.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff Richard Lee Wann's Motion for Judicial Notice of State Court Proceedings [53] is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff's Motion to Strike defendant McCarver's sur-reply [73] is **DENIED**.

**IT IS FURTHER ORDERED** that the separate motions to dismiss filed by defendants St. Francois County and V. Kenneth Rohrer [44], defendant Honorable Shawn Ragan McCarver [42], defendant Edward Pultz [40], and defendant Brice Sechrest [46] are **GRANTED**.

**IT IS FURTHER ORDERED** that the joint motion to dismiss filed by defendants Farmington Missouri Hospital Company, Dr. Ahmed Ardekani, MSW Nikki Rotter, Americare at Maplebrook Assisted Living, Edward Pultz, and Brice Sechrest [36] is **GRANTED in part and DENIED in part**. To the extent these defendants

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move the Court to take judicial notice of the state court proceedings, the motion is **GRANTED**.

**IT IS FURTHER ORDERED** that Counts 1 and 2 of plaintiff's complaint are dismissed with prejudice under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

**IT IS FURTHER ORDERED** that Count 7 of the complaint is dismissed without prejudice under Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction.

**IT IS FURTHER ORDERED** that defendants St. Francois County, V. Kenneth Rohrer, Honorable Shawn Ragan McCarver, Edward Pultz, and Brice Sechrest are dismissed from this cause of action.

**IT IS FURTHER ORDERED** that Counts 3, 4, 5, and 6 of plaintiff's complaint shall proceed against Farmington Missouri Hospital Company, Dr. Ahmed Ardekani, MSW Nikki Rotter, and Americare at Maplebrook Assisted Living.

This case will be set for a Rule 16 scheduling conference by separate Order, and the remaining defendants are reminded of their obligation to answer the complaint within the time set by the rules.

/s/ Catherine D. Perry  
CATHERINE D. PERRY  
UNITED STATES DISTRICT  
JUDGE

Dated this 7th day of March, 2016.

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**APPENDIX K — ORDER OF THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH  
CIRCUIT, FILED NOVEMBER 27, 2017**

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No: 16-3857

RICHARD LEE WANN,

*Appellant,*

v.

ST. FRANCOIS COUNTY, MISSOURI, *et al.*,

*Appellees.*

Appeal from U.S. District Court for the Eastern  
District of Missouri - St. Louis  
(4:15-cv-00895-CDP)

**ORDER**

The petition for rehearing *en banc* is denied. The  
petition for rehearing by the panel is also denied.

November 22, 2017

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans