

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. **19-2455**

E. THOMAS SCARBOROUGH, III, Appellant

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY; SUPREME COURT
OF PENNSYLVANIA

(D.C. No. 5-18-cv-02436)

SUR PETITION FOR REHEARING

Before: SMITH, *Chief Judge*, McKEE, AMBRO,
CHAGARES, JORDAN, HARDIMAN,
GREENAWAY, JR, SHWARTZ, KRAUSE,
RESTREPO, BIBAS, PORTER, MATEY, PHIPPS
and NYGAARD, * *Circuit Judges*

The petition for rehearing filed by appellant in
the above-entitled case having been submitted to the
judges who participated in the decision of this Court
and to all the other available circuit judges of the

circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

* Judge Nygaard's vote is limited to panel rehearing only.

BY THE COURT,

s/L. Felipe Restrepo
Circuit Judge

Date: May 14, 2020
Tmm/cc: E. Thomas Scarborough, III
Martha Gale, Esq.

—2a—

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

No. 19-2455

E. THOMAS SCARBOROUGH, III, Appellant

v.

**COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY; SUPREME COURT
OF PENNSYLVANIA**

On Appeal from the United States District Court for
the Eastern District of Pennsylvania (D.C. Civil
Action No. 5-18-cv-02436) District Judge: Honorable
Jeffrey L. Schmehl

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 18, 2020

Before: SHWARTZ, RESTREPO and NYGAARD,
Circuit Judges

(Opinion filed: February 20, 2020)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and
pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant E. Thomas Scarborough, III appeals the District Court's order dismissing his complaint. For the reasons set forth below, we will affirm the District Court's judgment.

According to his operative amended complaint, Scarborough and his ex-wife have been litigating a child-custody matter in the Court of Common Pleas of Northampton County for more than a decade. Scarborough alleged that the Court of Common Pleas violated his due-process rights in a variety of ways, including by improperly deferring to recommendations from a master, granting primary physical custody to Scarborough's ex-wife without holding a trial, ruling that Scarborough had agreed to a custody schedule when he had not actually agreed, and failing to fully consider his submissions. He also claimed that the Pennsylvania Supreme Court violated his due-process rights by dismissing his appeals. Scarborough asserted these claims in the District Court under 42 U.S.C. § 1983.

The defendants filed a motion to dismiss, which the District Court granted. The Court concluded that the two defendants—the Court of Common Pleas and the Pennsylvania Supreme Court—were immune from suit under the Eleventh Amendment. Scarborough filed a timely notice of appeal. In this Court, he has also filed a document requesting “mandamus relief for discovery and summary judgment,” in which he asks us to “investigate the internal operations of the Commonwealth Court.” We have jurisdiction under 28 U.S.C. § 1291. “We review *de novo* the legal grounds underpinning a claim of . . . sovereign immunity.” Karns v. Shanahan, 879 F.3d 504, 512 (3d Cir. 2018).

We agree with the District Court's analysis. The Supreme Court of Pennsylvania and the Northampton County Court of Common Pleas are entitled to immunity under the Eleventh Amendment. See Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 241 (3d Cir. 2005); see also Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993) (explaining that "suits against the States and their agencies . . . are barred regardless of the relief sought"). While states can waive their Eleventh Amendment immunity, see Koslow v. Pennsylvania, 302 F.3d 161, 168 (3d Cir. 2002), Pennsylvania has not done so, see Lavia v. Pa. Dep't of Corr., 224 F.3d 190, 195 (3d Cir. 2000) ("The Pennsylvania legislature has, by statute, expressly declined to waive its Eleventh Amendment immunity."). Moreover, although Congress can abrogate a state's sovereign immunity, it did not do so through the enactment of § 1983, the federal law under which Scarborough proceeds. See Quern v. Jordan, 440 U.S. 332, 345 (1979). ¹ And contrary to Scarborough's argument, he cannot avoid this bar by asserting a freestanding claim under the Fourteenth Amendment. See Capogrosso v. Supreme Ct. of N.J., 588 F.3d 180, 185 (3d Cir. 2009); see also Magana v. N. Mar. I., 107 F.3d 1436, 1442–43 (9th Cir. 1997) (Aldisert, J.). Because of this bar, we are also satisfied that any amendment to the complaint would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 106, 108 (3d Cir. 2002).

Accordingly, we will affirm the District Court's judgment. Scarborough's motion "for mandamus relief for discovery and summary judgment" is denied.

¹ In his brief on appeal, Scarborough claims that Title II of the Americans with Disabilities Act (ADA) abrogates state immunity. This is true in some circumstances. See *Bowers v. NCAA*, 475 F.3d 524, 556 (3d Cir. 2007). However, although he mentioned that he has ADHD and complained about his ability to present his case in state court, Scarborough did not plead an ADA claim in his counseled complaint in the District Court, and he cannot raise a new claim for the first time on appeal. See *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 558 (3d Cir. 2017). We also note that, although the outlines of this putative claim are not at all clear, if Scarborough were to challenge a final order issued by the Court of Common Pleas denying an accommodation, his claim would likely be barred by the Rooker-Feldman doctrine. See *Great W. Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010); *Sykes v. Cook Cty. Circuit Court Probate Div.*, 837 F.3d 736, 743 (7th Cir. 2016) (“Rooker-Feldman will not always bar a litigant from bringing claims against a state court for denial of reasonable accommodations. . . . But when as in this case the injury is executed through a court order, there is no conceivable way to redress the wrong without overturning the order of a state court. Rooker-Feldman does not permit such an outcome.”); see generally *Malhan v. Sec'y U.S. Dep't of State*, 938 F.3d 453, 460 (3d Cir. 2019) (discussing when an order is final in this context).

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

September 12, 2019
ACO-115

No. 19-2455

E. THOMAS SCARBOROUGH, III, Appellant

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY; SUPREME COURT
OF PENNSYLVANIA

(E.D. Pa. No. 5-18-cv-02436)

Present: MCKEE and SHWARTZ, Circuit Judges

1. Motion by Appellees to be Excused from Filing a Brief pursuant to LAR 31.2;
2. Response by Appellant in Opposition to Appellees' Motion to be Excused from filing a Brief;
3. Motion to Strike Appellees' Motion to be Excused from Filing a Brief and Declare the Memorandum of Law in support of motion as a "Reply Brief".

Respectfully,
Clerk/tmm

ORDER

The foregoing motion by Appellees to be excused from filing a brief pursuant to LAR 31.2 is granted and the motion to strike Appellees' motion to be excused from filing a brief and declare the memorandum of law in support of the motion as a "reply brief" is denied.

By the Court,

s/Patty Shwartz
Circuit Judge

Dated: November 1, 2019

Tmm/cc: E. Thomas Scarborough, III
Martha Gale, Esq.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

E. THOMAS SCARBOROUGH, III,
Plaintiff,

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, et al.
Defendants.

CIVIL ACTION NO. 18-2436

ORDER

AND NOW, this 14th day of June, 2019, upon
review of Defendants' Motion to
Dismiss Plaintiff's Amended Complaint (Docket No.
5), and Plaintiff's response, and
after oral argument being held, it is hereby
ORDERED as follows:

1. Defendants' Motion to Dismiss is **GRANTED**;
2. Plaintiff's Amended Complaint is **DISMISSED**
with prejudice; and
3. The Clerk shall close this case.

BY THE COURT:

/s/ Jeffrey L. Schmehl
Jeffrey L. Schmehl, J.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA
E. THOMAS SCARBOROUGH, III,

Plaintiff,

v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, et al.

Defendants.

CIVIL ACTION NO. 18-2436

MEMORANDUM OPINION

Schmehl, J. /s/ JLS

June 14, 2019

I. INTRODUCTION

Plaintiff's Amended Complaint in this matter sets forth a cause of action pursuant to 42 U.S.C. § 1983 for alleged violations of his constitutional rights in connection with his state court child custody case. Defendants, the Court of Common Pleas of Northampton County and the Supreme Court of Pennsylvania, now move to dismiss Plaintiff's Amended Complaint. For the reasons that follow, I will grant Defendants' Motion to Dismiss, and dismiss Plaintiff's Amended Complaint with prejudice.

II. FACTS

Plaintiff's allegations primarily consist of complaints regarding the handling of his child custody case and the orders that were issued by the Northampton County Court of Common Pleas from 2005 until February of 2016 in his custody matter. Plaintiff claims that venue was improper, that he was deprived of a trial before a judge and that the Court erred in awarding primary physical custody to the mother of his child.

Plaintiff also avers that the Pennsylvania Supreme Court wrongly dismissed and/or quashed his appeals and refused his attempts to obtain the extraordinary remedy of the exercise of King's Bench power in connection with his child custody case, and that that Court "has failed to assert proper control and authority over the Common Pleas Court of Northampton County and to protect Plaintiff's due process rights." (Cmplt. ¶¶ 65 and 66)

III. LEGAL STANDARD

A motion to dismiss filed under Federal Rule of Civil Procedure 12(b)(1) challenges a court's subject-matter jurisdiction over the plaintiff's claims. Fed. R. Civ. P. 12(b)(1). "At issue in a Rule 12(b)(1) motion is the court's very power to hear the case." *Judkins v. HT Window Fashions Corp.*, 514 F.Supp.2d 753, 759 (W.D. Pa. 2007), quoting *Mortensen v. First Federal Savings & Loan Assoc.*, 549 F.2d 884, 891 (3d Cir. 1977). As the party asserting that jurisdiction exists, Plaintiff bears the burden of showing that his or her claims are properly before the court. *Development Finance Corp. v. Alpha Housing & Health Care*, 54 F.3d 156, 158 (3d Cir. 1995).

In reviewing a Rule 12(b) (1) motion, a court must determine whether the attack on its

jurisdiction is a facial attack or a factual attack. A facial attack challenges the sufficiency of the plaintiff's pleadings on jurisdictional grounds. *Petruska v. Gannon University*, 462 F.3d 294, 302, n. 3 (3d Cir.2006). When considering a facial attack, a court must accept the allegations contained in the plaintiff's complaint as true. *Id.* A factual attack on the court's jurisdiction must be treated differently. *Id.* When considering a factual attack, the court does not attach a presumption of truthfulness to the plaintiff's allegations, and the existence of disputed material facts does not preclude the court from deciding for itself whether jurisdiction over the plaintiff's claims can be properly exercised. *Mortensen*, 549 F.2d at 891.

IV. DISCUSSION

In the instant matter, Defendants argue that they are immune from Plaintiff's claims due to the immunity provided to states under the Eleventh Amendment. All states and state entities are entitled to immunity under the Eleventh Amendment. *Lombardo v. Pennsylvania Dept. of Public Welfare*, 540 F.3d 190, 194-95 (3d Cir. 2008). However, there are two ways that a state may lose this immunity: Congress can explicitly abrogate it in a particular statute, or a state can waive it with regard to a particular statute. See *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 (1985) ("[I]f a State waives its immunity and consents to suit in federal court, the Eleventh Amendment does not bar the action."); *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976) ("Congress may, in determining what is 'appropriate legislation' for the purpose of enforcing the provisions of the Fourteenth Amendment,

provide for private suits against States or state officials which are constitutionally impermissible in other contexts.”).

Defendants, the Court of Common Pleas of Northampton County and the Supreme Court of Pennsylvania, are both courts of the unified judicial system pursuant to 42 Pa.C.S. §301(1) and (4). Further, the term “Commonwealth government” includes “the courts and other officers or agencies of the unified judicial system” and “court” includes “any one or more of the judges of the court . . .” 42 Pa. C.S. § 102, *Callahan v. City of Philadelphia*, 207 F.3d 668, 672 (3d Cir. 2000). Accordingly, Defendants are state entities that are entitled to immunity under the Eleventh Amendment, unless Pennsylvania has waived immunity or Congress has explicitly abrogated immunity in the statute at issue in this matter.

Plaintiff does not argue that Pennsylvania has waived its immunity. Rather, Plaintiff attempts to circumvent Defendants’ immunity by arguing that the Eleventh Amendment does not grant immunity for due process claims under the Fourteenth Amendment. This argument would have merit only if it can be shown that Congress eliminated Eleventh Amendment immunity when it passed the statute under which Plaintiff brings this matter. Therefore, I must determine which statute is at issue before I address whether Congress has in fact abrogated Defendants’ immunity in this instance.

Despite his attempts to label it differently, it is clear that Plaintiff is bringing a claim pursuant to section 1983 for alleged violations of his civil rights. The caption of the Amended Complaint clearly states: “Complaint for Violation of Civil Rights (42

U.S.C. Section 1983.) Further, the Amended Complaint contains a lone cause of action described as “Violation of Civil Rights – 42 U.S.C. Section 1983” Am. Compl., ECF numbered p. 3. The Amended Complaint does mention Plaintiff’s due process rights several times, but the pleading plainly sets forth a cause of action under section 1983 for alleged constitutional due process violations. The required method of bringing a federal action against Defendants for alleged violation of Plaintiff’s due process rights under the Fourteenth Amendment is pursuant to section 1983.¹ His attempts to distinguish the instant action from a section 1983 action are unsuccessful, as all actions for alleged due process violations are brought under section 1983. Congress did not abrogate the Eleventh Amendment when it passed § 1983, *Machon v. Pennsylvania Dep't of Pub. Welfare*, 847 F. Supp. 2d 734, 743–44 (E.D. Pa. 2012); *Quern v. Jordan*, 440 U.S. 332, 345 (1970), and no court has carved out an exception to this rule for due process claims under the Fourteenth Amendment. See *Burns v. Alexander*, 776 F.Supp.2d 57 (W.D. Pa. Mar. 4, 2011) (finding

¹ The United States Supreme Court has repeatedly held that the purpose of section 1983 is to “create[] a species of tort liability in favor of persons who are deprived of rights, privileges or immunities secured to them by the Constitution.” *Memphis Community School District v. Stachura*, 477 U.S. 299, 305-306 (1986).

that § 1983 does not contain language evincing a legislative intent to subject the States to suit for money damages and has not therefore been construed as an abrogation of the States' Eleventh Amendment Immunity in a case where Plaintiff presented claims under the **Due Process Clause** of the Fourteenth Amendment). Accordingly, Defendants' immunity in this case is clear under present law.

The Eleventh Amendment clearly bars § 1983 suits against states and state officials. *Dill v. Com. of Pa.*, 3 F. Supp. 2d 583, 587 (E.D. Pa. 1998); *Jones v. Com. of Pa.*, 2000 WL 15073 (E.D. Pa. 2000) (stating that “[i]t is firmly established . . . that the Eleventh Amendment immunizes a state from claims under § 1983 . . .”). Plaintiff's attempts to distinguish the cases cited by Defendants are unavailing, and it is telling that Plaintiff has failed to cite to a single case holding that due process claims under the Fourteenth Amendment are exempt from Eleventh Amendment immunity. All claims brought under section 1983 are subject to Eleventh Amendment immunity; there is no exception for due process claims under the Fourteenth Amendment. Accordingly, Defendants are entitled to sovereign immunity and cannot be sued by Plaintiff in this matter.

V. CONCLUSION

For the foregoing reasons, the Court will grant Defendants' motion to dismiss and dismiss Plaintiff's Amended Complaint with prejudice.

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**IN THE SUPREME COURT OF
PENNSYLVANIA MIDDLE DISTRICT**

E. THOMAS SCARBOROUGH, III,

Petitioner

v.

NORTHAMPTON COUNTY COURT OF COMMON
PLEAS,

Respondent

No. 126 MM 2018

ORDER

PER CURIAM

AND NOW, this 27th day of September, 2018,
the Application for Leave to File Original Process
and the Application to File under Seal are
GRANTED, and the Application for Extraordinary
Relief is DENIED.

—5a—

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

E. THOMAS SCARBOROUGH III CASE NO.:
Plaintiff,
v.

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY
and
SUPREME COURT OF PENNSYLVANIA
Defendants.

**AMENDED COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS (42 U.S.C. Section 1983)**

JURY TRIAL DEMANDED

Plaintiff alleges the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§1331 and 1343 in that the controversy arises under the United States Constitution and under 42 U.S.C. §1983.
2. The acts and omissions giving rise to Plaintiff's claims primarily occurred in Easton, Pennsylvania and, therefore, the appropriate venue for this action is the United States District Court for the Eastern District of Pennsylvania.

IDENTIFICATION OF PARTIES

3. Plaintiff, E. Thomas Scarborough, III, is a natural person currently residing in Bucks County, pennsylvania.
4. Defendant, Court of Common Pleas of Northampton Cpunty, is part of the Pennsylvania Judicial System and is organized and operating under the Constitution and Laws of the Commonwealth of Pennsylvania.
5. Defendant, Supreme Court of Pennsylvania, is part of the Pennsylvania Judicial System, is organized and operating under the Constitution an Laws of the Commonwealth of Pennsylvania, and has the authority over the Court of Common Pleas of Northampton County.

STATEMENT OF FACTS

6. Plaintiff married Christy Scarborough on December 31, 2003.
7. Plaintiff and Christy Scarborough had a child, S.S., who was born December 27, 2004.
8. Approximately one month prior to the birth of S.S., Christy Scarborough, moved from her residence with Plaintiff in Bucks County, Pennsylvania, to Northampton County, Pennsylvania.
9. Plaintiff filed a Complaint for Divorce and Custody in the Court of Common Pleas of Bucks County, Pennsylvania.
10. In 2007, a Decree of Divorce was entered by the Court of Common Pleas of Bucks County, Pennsylvania.
11. The litigation of the custody of S.S. took place in the Court of Common Pleas of Northampton County.
12. The litigation of the custody of S.S. has taken years.

13. At all relevant timeshere, Plaintiff resided, and continues to reside, in Bucks County.
14. Plaintiff filed a Complaint for Divorce and Custody in the Court of Common Pleas of Bucks County, Pennsylvania.
15. In 2007, a Decree of Divorce was entered by the Court of Common Pleas of Bucks County, Pennsylvania.
16. Since 2005, the litigation of the custody of S.S. took place in the Court of Common Pleas of Northampton County.
17. In June, 2005, approximately six months after the birth of S.S., Plaintiff and Christy Scarborough agree to proceed with a custody evaluation by Dr. Ronald Esteve.
18. Plaintiff paid for and initiated his participation with the custody evaluation with Dr. Esteve.
19. Christy Scarborough canceled her appointment with Dr. Esteve and has failed and/or refused to participate in the custody evaluation with Dr. Esteve.
20. To date, the custody evaluation by Dr. Ronald Esteve has never been completed.
21. In September, 2005, the parties attended a custody conference with master Hogan. At the conference, both Parties requested a custody evaluation, including psycological evaluations. Despite both Parties requesting the custody evaluation, the Master denied the requests for a custody evaluation.
22. On November 16, 2005, Court of Common Pleas of Northampton County entered an Order granting Christy Scarborough primary physical custody of S.S. and Plaintiff partial physical custody with limited visitation/parenting time with S.S.

23. Plaintiff never agreed that Christy Scarborough would have primary physical custody of S.S.
24. For the November 16, 2005, Order, the Court of Common Pleas of Northampton County claimed Plaintiff, at the custody conference, agreed to granting Christy Scarborough primary physical custody of S.S. and Plaintiff having partial physical custody with the limited visitation/parenting time schedule. However, Plaintiff claims he did not consent to these terms. There is no record of the custody conference and no proof that the Plaintiff agreed to these terms.
25. The Court of Common Pleas of Northampton County Order of November 16, 2005, was entered without the consent of Plaintiff.
26. The Court of Common Pleas of Northampton County Order of November 16, 2005, was entered without a trial or hearing of any kind.
27. The Court of Common Pleas of Northampton County Order of November 16, 2005, was entered without the completion of any custody evaluation.
28. The Court of Common Pleas of Northampton County Order of November 16, 2005, is invalid because defendant did not consent to Christy Scarborough having primary physical custody, it was entered by a Master who did not have the authority to grant primary physical custody to Christy Scarborough, and it was the result of fraud (namely, a false claim that Plaintiff consented to the Order).
29. Despite the invalidity of the Court of Common Pleas of Northampton County Order of November 16, 2005, the basic terms of the order (specifically, Christy Scarborough being granted primary physical custody of S.S.), have never been modified or revised by the Court.

30. Even though Plaintiff and Christy Scarborough had agreed to Dr. Esteve complete a custody evaluation, the Court of Common Pleas of Northampton County failed to order Christy Scarborough to participate in the custody evaluation.

31. In February, 2006, Plaintiff and Christy Scarborough attended a custody conference with Master Murray. At said conference, Christy Scarborough, for the first time, objected to a custody evaluation by Dr. Esteve, claiming Dr. Esteve had a conflict of interest by falsely alleging he had previously treated Plaintiff and/or Christy Scarborough.

32. Later, it was determined that Dr. Esteve had never treated Plaintiff or Christy Scarborough and there was no conflict of interest.

33. On September 22, 2006, the Court of Common Pleas of Northampton County entered an Order for Dr. Kinney to complete a custody evaluation.

34. Plaintiff objected to having Dr. Kinney complete a custody evaluation and requested that Dr. Esteve complete the custody evaluation.

35. Dr. Kinney never completed a full custody evaluation.

36. However, Dr. Kinney performed psychological testing on Plaintiff and Christy Scarborough. The raw data from the testing confirmed Plaintiff's concerns regarding Christy Scarborough's mental health and stability.

37. Later, Dr. Kinney was disciplined and/or sanctioned for his unethical behavior in another case and he was no longer qualified to complete a custody evaluation.

38. on April 4, 2008, the Court of Common Pleas of Northampton County appointed Dr. Nastasee to perform a custody evaluation.

39. Dr. Nastasee declined the appointment as a custody evaluator in this case.

40. Thereafter, Plaintiff and Christy Scarborough again agreed that Dr. Esteve would complete a custody evaluation.

41. Again, Christy Scarborough breached the Parties agreement to have Dr. Esteve perform a custody evaluation and she refused and/or failed to participate in a custody evaluation with Dr. Esteve.

42. From April, 2008, until February, 2016, the Court of Common Pleas of Northampton County dealt with petitions for Contempt against Christy Scarborough and Petitions to modify custody. Generally, the petitions resulted in Christy Scarborough being found in contempt and minor changes in Plaintiff's partial custody/visitation/parenting time schedule. However, no significant modifications were made and Christy Scarborough continued to have primary physical custody of S.S.

43. Importantly, despite numerous requests by Plaintiff to have the custody evaluation completed, the order granting Christy Scarborough primary physical custody, and for a custody trial, the Court of Common Pleas of Northampton County delayed any meaningful trial for the custody of S.S.

44. In February, 2016, the Court of Common Pleas of Northampton County held a custody trial.

45. The said custody trial was conducted without a full custody evaluation because Christy Scarborough refused and/or failed to participate in the custody evaluation with Dr. Esteve and the Court of

Common Pleas of Northampton County failed to require Christy Scarborough to participate in the custody evaluation with Dr. Esteve.

46. Any opinions offered by any custody experts were not beneficial to the Court due to the fact that too much time passed between the limited/partial examinations and the custody trial.

47. The Court of Common Pleas of Northampton County did note that Dr. Gordon testified that he reviewed the raw data from the psychological testing and he believed that Christy Scarborough was coached by her attorney so she would "respond positively to the information in the MMPI testing" and "some of Christy Scarborough's testing data revealed that she had significant elevation in a scale called psychopathic deviant."

48. The Court of Common Pleas of Northampton County ignored the evidence that Christy Scarborough "had significant elevation in a scale called psychopathic deviant" or that she was coached by her attorney.

49. Ultimately, the Court of Common Pleas of Northampton County entered an Order on June 9, 2016, that essentially maintained the prior Orders by granting primary physical custody of S.S. to Christy Scarborough and granting partial physical custody of S.S. to Plaintiff.

50. Until February 2016, the Court did not have a custody trial. This action went from early 2005, until 2016, without having a custody trial.

51. The Court of Common Pleas of Northampton County failed to act correctly by allowing nine years to pass without a custody trial.

52. By allowing a nine year delay and by not requiring Christy Scarborough to participate in the

custody evaluation with Dr. Esteve, the Court did not have a current and valid custody evaluation for its decision articulated in the June 9, 2016, Order.

53. The Court of Common Pleas of Northampton County has failed to even review all the pleadings and documents filed by Plaintiff. Specifically, the President Judge stated, "I have no idea what [Plaintiff's] petition for recusal is all about", "Well, I don't know that anyone is going to want to read it", and "I don't want to know about the background unless the background has to do with me [background] doesn't matter to me at all."

54. At one point, the Court of Common Pleas of Northampton County appointed Dr. Lane to perform a Brief Focused Evaluation of Christy Scarborough; however, the Court did not give Dr. Lane any focus, so it was impossible for Dr. Lane to perform a Brief Focused Evaluation of Christy Scarborough.

55. Moreover, the Court of Common Pleas of Northampton County prohibited Dr. Lane from having an communication with Plaintiff, which made it impossible for a complete and accurate evaluation to be completed.

56. The Judges of the Court of Common Pleas of Northampton County have not given adequate and serious consideration to Plaintiff's pleadings and claims; instead the Court of Common Pleas of Northampton County simply dismisses Plaintiff by characterizing Plaintiff in pejorative terms, such as calling Plaintiff a "serial *pro se* litigant".

57. Plaintiff has ADHD, which is a protected disability, and the Court of Common Pleas of Northampton County failed to adequate accomodations and time for Plaintiff to present his case at trial. The existence of Plaintiff's ADHD is

another important reason for the Court to read all of Plaintiff's pleadings and to consider the background of this matter.

58. On October 28, 2016, the Court of Common Pleas of Northampton County entered an Order for S.S. to engage in counseling; however, the Court did not even consider Plaintiff's choice of counselors.

59. The Court of Common Pleas of Northampton County has concluded, at various times, that Christy Scarborough is in contempt for violating Court Orders, such as her violation of Plaintiff's rights of joint legal custody, acting in ways that alienate the child from Plaintiff, and violating Plaintiff's rights of partial physical custody.

60. The Common Pleas Court of Northampton County routinely denies Motions and Petitions filed by Plaintiff in which he seeks to assert his due process rights under the U.S. Constitution in the custody action involving his daughter.

61. The Appellate Courts have dismissed or quashed all appeals filed by Plaintiff in which he seeks assert his due process rights under the U.S. Constitution in the custody action involving his daughter.

62. Despite several requests, through appeal and requesting a King's Bench/exercise of extraordinary power, the Pennsylvania Supreme Court has failed to assert proper control and authority over the Common Pleas Court of Northampton County and to protect Plaintiff's due process rights.

CAUSE OF ACTION VIOLATION OF CIVIL RIGHTS-42 U.S.C. §1983

63. According to the U.S. Supreme Court, parental rights are protected by the U.S. Constitution. In

Troxel v. Granville, 530 U.S. 57 (200), Justice Souter noted that the Supreme Court has long recognized that a parent's interests in the future, upbringing, companionship, care, and custody are generally protected by the Due Process Clause of the 14th amendment.

64. Throughout the course of the custody litigation, Plaintiff's due process rights protected by the U.S. Constitution were violated by the Common Pleas Court of Northampton County by its acts and omissions which include, but are not limited to, the following:

- a. The Court of Common Pleas of Northampton County entered a Custody Order based on the recommendation of a Master, not upon the determination of a Judge of the Common Pleas Court of Northampton County.
- b. The Common Pleas Court of Northampton County enter a Custody Order without providing Plaintiff a trial or evidentiary hearing.
- c. The Common Pleas Court of Northampton County granted Christy Scarborough primary physical custody of S.S. without providing Plaintiff a trial or evidentiary hearing.
- d. The Common Pleas Court of Northampton County entered a custody order and granted Christy Scarborough primary physical custody of S.S. without allowing Plaintiff to obtain a Custody Evaluation involving both Parties, without just cause, and without proving Plaintiff to be unfit.
- e. The Common Pleas Court of Northampton county entered a custody order and granted Christy Scarborough primary physical custody of S.S. without requiring Christy Scarborough to participate in a custody evaluation with Dr. Esteve, even though

Christy Scarborough had agreed to undergo a custody evaluation with Dr. Esteve.

- f. The Common Pleas Court of Northampton County entered a custody order and granted Christy Scarborough primary physical custody of S.S. without timely considering psychological evidence, testing, and data demonstrating that Christy Scarborough suffers from borderline personality disorder.
- g. The Common Pleas Court of Northampton County entered a custody order and granted Christy Scarborough primary physical custody of S.S. that was allegedly agreed to by Plaintiff; however, Plaintiff had not agreed to said custody order.
- h. The Common Pleas Court of Northampton County entered a custody order and granted Christy Scarborough primary physical custody of S.S. for "primary custody" even though "primary custody" was not an issue in the litigation/pleadings at that time.
- i. The Common Pleas Court of Northampton County failed to act in a speedy manner in determining the custody of S.S.
- j. The Common Pleas Court of Northampton County routinely changed judges in the custody action involving S.S., which created a situation in which the Court failed to consider all of the evidence as a whole and act consistently with orders by prior judges.
- k. The Common Pleas Court of Northampton County entered an Order stating that the Order resolves all pending motions and petitions even though the order did not resolve all pending motions and petitions.
- l. The Common Pleas Court of Northampton County and the Judges and Masters involved in the custody

action involving S.S. failed to read and consider all pleadings filed by Plaintiff.

- m. The Common Pleas Court of Northampton County failed to oversee and regulate the conduct of Masters involved in the custody action involving S.S.
- n. The Common Pleas Court of Northampton County failed to require Christy Scarborough to comply with agreements she made with Plaintiff, such as the agreement for Dr. Esteve to complete a custody evaluation.
- o. The Common Pleas Court of Northampton County routinely denied Motions and Petitions by Plaintiff without fully considering said Motions and Petitions and without oral argument.
- p. The Common Pleas Court of Northampton County failed to consider Christy Scarborough's motive when it granted her Petition to relocate with the child.
- q. The Common Pleas Court of Northampton proceeded with the custody action involving S.S. even though venue should have been in Bucks County, Pennsylvania.
- r. The Common Pleas Court of Northampton County materially modified the role of Dr. Esteve to act as a "marital therapist" instead of a custody evaluator.
- s. The Common pleas Court of Northampton obstructed Plaintiff's discovery in the underlying custody matter.
- t. The Common Pleas Court of Northampton County disallowed and/or ruled out all possible neutral custody evaluators.
- u. Without adequate basis, the Common Pleas Court of Northampton disallowed Dr. Esteve from being the custody evaluator.

- v. The Common Pleas Court of Northampton County appointed Phil Kinney to serve as a custody evaluator even though he was not qualified and had been sanctioned and reprimanded by the Bureau of Professional and Occupational Affairs for violating ethical principals and deviating from professional guidelines and standards.
- w. The Common Pleas Court of Northampton failed to act upon, or rule upon, Motions and/or Petitions filed by Plaintiff.
- x. The Common Pleas Court of Northampton appointed Dr. Lane to evaluate Christy Scarborough but refused to allow Plaintiff to communicate with Dr. Lane.
- y. The Common pleas Court of Northampton County ordered a Brief Focused evaluation without having any focus, when the Court should have ordered a full custody evaluation.
- z. The Common Pleas court of Northampton County allowed the minor child, S.S. to be involved in evaluations even though the Parties agreed that she would not be involved.
- aa. The Common Pleas Court of Northampton County allowed Masters to act outside the scope of law.
- bb. The Common Pleas Court of Northampton County failed to adequately supervise Masters.
- cc. the Common pleas Court of Northampton County failed to accomodate his protected disability.
- dd. The Common Pleas Court of Northampton County allowed Christy Scarborough to have S.S. participate in therapy without considering Plaintiff's choice of counselor for S.S.
- ee. The Common Pleas Court of Northampton County violated Plaintiff's right of joint legal custody

and right to raise his child by failing to consider his choice of counselor for S.S.

ff. The Common Pleas Court of Northampton County by failing to protect the constitutionally protected relationship of a parent and child.

65. Throughout the course of the custody litigation, Plaintiff's due process rights protected by the U.S. Constitution were violated by the Supreme Court of Pennsylvania by its acts and omissions which include, but are not limited to, the following:

a. By dismissing or quashing all appeals filed by Plaintiff in which he seeks assert his due process rights under the U.S. Constitution in the custody action involving his daughter.

b. By failing to assert proper control and authority over the Common Pleas Court of Northampton County and to protect Plaintiff's due process rights.

66. Despite several requests, through appeal and requesting a King's Bench/exercise of extraordinary power, the Pennsylvania Supreme Court has failed to assert proper control and authority over the Common Pleas Court of Northampton County and to protect Plaintiff's due process rights.

67. Due to Defendant's violation of Plaintiff's due process rights, Plaintiff has been unable to have a fair and impartial custody trial.

68. Without the relief requested herein, it is impossible for Plaintiff to have a fair and impartial custody trial.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court provide the following:

A. Declare that the actions of the Court of Common Pleas of Northampton County and the Supreme Court of Pennsylvania violated Plaintiffs due process rights;

- B. Ordering Defendants to pay compensatory damages to Plaintiff;
- C. Ordering Defendants to restore and/or place venue of Plaintiff's Pennsylvania custody case involving Christy Scarborough in Bucks County, Pennsylvania;
- D. Ordering Defendants to order that Plaintiff and Christy Scarborough undergo a custody evaluation with Dr. Esteve, but not involve the child in said evaluation;
- E. Ordering Defendants to pay Plaintiff's reasonable attorney fees and costs; and
- F. Such other financial or equitable relief as is reasonable and just.

JURY TRIAL DEMAND

Plaintiff hereby requests a jury trial in this matter.

LAW OFFICES OF SCHROLL AND BOWMAN

/s/ Bryan C. Schroll
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Dated: 6/29/18

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

E. THOMAS SCARBOROUGH III
Appellant- Plaintiff

v. No. 19-2455

COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, et al.
Appellee- Defendant

**MOTION IN SUPPORT OF REQUESTED
MANDAMUS RELIEF FOR DISCOVERY AND
SUMMARY JUDGEMENT**

Now comes the above-named Plaintiff, acting on his own behalf, hereby moves this Honorable Court to enter an Order, to investigate the internal operations of the Commonwealth Court and offers in support the following:

1. The writ to compel discovery will be in aid of the Court's appellate jurisdiction, because the facts underlying this claim would be sufficient to establish by clear and convincing evidence that Defendant has and continues to violate Plaintiff/Father's guaranteed Constitutional Rights.
2. By allowing and enabling discovery, the Federal Court may provide summary judgement of Defendant's fraud (inter Alia). The alleged fraud is a factual predicate that could not have been previously

discovered through the exercise of due diligence. The Plaintiff/Father has exhausted the remedies available in the courts of the State, whereas circumstances exist that render such process ineffective to protect the rights of Plaintiff/Father.

3. The relief sought is from the judgment of a state court, that will not investigate the fraud and other crimes alleged. This decision is contrary to clearly established Federal law, as determined by the Supreme Court of the United States. The State Court's decision to ignore criminal allegations was based on an unreasonable determination of the facts, in light of the evidence presented in 126 MM 2018. This deliberate indifference evidences the absence of available State corrective process because no reasonable fact finder would ignore credible evidence supporting credible allegations of fraud upon the Court and other crimes.

4. Appellant's Brief advances specific federal crimes alleged to have been committed by Defendant. Pages 67-69 of Appellant's Brief, requests emergency relief for discovery pursuant to 28 U.S.C. § 1361.

"Exceptional circumstances warrant judicial intervention into the internal operations of the Commonwealth Court."

5. The exceptional circumstances obstructing discovery, warrant the exercise of this Court's discretionary powers. Adequate relief cannot be obtained in any other form or from any other court. In support of this averment, the Plaintiff/Father offers his appended 2018 Kings Bench Petition, which begs the same relief previously requested in 684 MAL 2017; 271 MT 2011; 135 MM 2009. This document (126 MM 2018) is essential to

understanding that the relief sought is not available in any other court.

6. Additionally, the Pennsylvania Disciplinary Board twice refused pleas to investigate discovery interference [(C2-11-503) and complaint in 2017]. The Judicial Conduct Board failed to investigate 2011-257; 2017-142; 2017-143; 2017-144. The State Court will not investigate the alleged malicious abuse of process, see appended October 8, 2017 correspondence.

7. Federal law enforcement agents investigate potential violations of federal law, to include the violation of civil rights. The Attorney General has established guidelines for domestic FBI operations (Department of Justice). The general objective of these Guidelines is the full utilization of all authorities and investigative methods, consistent with the Constitution and laws of the United States, to protect the United States and its people from federal crimes.

8. A full investigation may be initiated if there is an articulable factual basis for the investigation that reasonably indicates that a federal crime has occurred. 126 MM 2018 provides a factual basis for Ordering emergency relief for a full federal investigation.

WHEREFORE, Plaintiff/Father renews his request for the Appellate Court to Order emergency relief for discovery and or any other relief deemed appropriate.

Respectfully submitted,

September 27, 2019



E. Thomas Scarborough III, *pro se*

—7a—

**In the Supreme Court for the Commonwealth
of Pennsylvania
Middle District**

No. 126, M.D. Misc. Docket 2018 referencing;
684 MAL 2017; 271 MT 2011; 135 MM 2009

E. THOMAS SCARBOROUGH III

v.

NORTHAMPTON COUNTY COURT OF COMMON
PLEAS

**APPLICATION FOR LEAVE TO FILE
ORIGINAL PROCESS IN THE SUPREME
COURT & EMERGENCY APPLICATION FOR
EXTRAORDINARY RELIEF FROM
NORTHAMPTON COURT**

E. Thomas Scarborough III, *pro se*
3876 Applebutter Road
Perkasie, PA 18944
(267) 221-7236
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PARTIES

1. Petitioner/Father, E. Thomas Scarborough III, (hereinafter “Father”) is the father of S. S., and is the Father in a custody action, E. Thomas

Scarborough III v. Christy Scarborough, Common Pleas Court of Northampton County, No. 2005-2186 (hereinafter “custody action”).

2. The Court of Common Pleas of Northampton County (hereinafter “Northampton Court”) is the Defendant in this proceeding and has incorrectly accepted jurisdiction of the underlying custody action, violated the due process rights of Father, failed to timely obtain a Custody Evaluation from an objective, qualified individual, interfered with discovery and entered Orders that are not in the best interests of S. S..
3. Christy Scarborough (hereinafter “Mother”) is the mother of S. S. and is the Defendant in a custody action.
4. S. S. was born on December 27, 2004, is the child of Father and Mother, is currently 13 ½ years old, and is the child involved in the underlying custody action.

JURISDICTION AND RELIEF SOUGHT

5. For the best interests of S. S., Father requests leave to file original process in this Court for custody of his daughter, S. S..
6. Father/Petitioner requests this Court to exercise its “King’s Bench Power” and/or exercise its “power of extraordinary jurisdiction”.
7. Extraordinary jurisdiction allows the Pennsylvania Supreme Court to accept “any matter pending before any court . . . of this Commonwealth” and allows this Court to accept “plenary jurisdiction of such matter at any stage thereof [to] enter a final order or otherwise cause right and justice to be done.” See 42 Pa. C.S. § 726.
8. This Court’s King’s Bench jurisdiction allows the Court to exercise the “power of general

superintendency over inferior tribunals.” See Board of Revision of Taxes, City of Philadelphia v. City of Philadelphia, 4 A.3d 610, 620 (2010).¹

9. Father/Petitioner requests this Court to invoke original jurisdiction of the custody matter between Father and Mother involving the child, S. S..
10. Father/Petitioner requests that this Court vacate and dismiss all orders entered by the Northampton Court in custody action.
11. If this Court does not accept original jurisdiction of the custody matter, then Father/Petitioner requests that this Court transfer jurisdiction/venue of the custody action to the Common Pleas Court of Bucks County.
12. Father/Petitioner request that this Court order Mother to complete the previously agreed upon Custody Evaluation with Dr. Ronald Esteve, which the Northampton Court refused to have completed.
13. This Court should exercise its King’s Bench Power and/or extraordinary jurisdiction to cause right and justice to be done pursuant to 41 Pa. C.S. § 726, which has not been done by the Northampton Court.
14. Importantly, this Court should exercise its King’s Bench Power and/or extraordinary jurisdiction because this matter involves the best interests of a child, which have not been considered or respected by the Northampton Court.
15. This Court should exercise its King’s Bench Power and/or extraordinary jurisdiction because it

¹ The King’s Bench power originated in the Act of May 22, 1722, 1 Sm. L. 131,140 Section XII, which gave the Court “all jurisdictions and powers of the three superior courts at Westminster, namely, the King’s Bench, the Common Pleas, and the Exchequer” Carpentertown Coal & Coke Co. v. Laird, 61 A.2d 426, 428 (1948). The King’s Bench power survived the 1968 amendment to the Pennsylvania Constitution.

has a duty to care for, and protect, the well-being of children.

16. This Court should exercise its King's Bench Power and/or extraordinary jurisdiction because it has a duty to ensure that the lower court, specifically the Northampton Court, complies with the laws and procedures required by lower courts.

17. This Court should exercise its King's Bench Power and/or extraordinary jurisdiction in order to protect the parental right and due process rights of Father, which have not been considered or respected by the Northampton Court.

18. This Court should exercise its King's Bench Power and/or extraordinary jurisdiction because the Northampton Court has substantially demonstrated that the obstructed, relevant issues advanced herein, will never be reviewed.

STATEMENT OF FACTS

19. Father married Mother on December 31, 2003.

20. Father and Mother had a child, S. S., who was born on December 27, 2004.

21. Approximately one month prior to the birth of S. S., Mother, moved from her residence with Father in Bucks County, Pennsylvania, to Northampton County, Pennsylvania.

22. Mother was a tenured employee of the Central Bucks School District.

23. At all relevant times herein, Father resided and continues to reside, in Central Bucks County.

24. Father filed an Amended Complaint for Divorce and Custody (Attached as Exhibit "1") in the Court of Common Pleas of Bucks County Pennsylvania, prior to S. S.'s sixth month, because Mother refused to allow unsupervised visitation.

25. The Bucks County Court of Common Pleas Prothonotary receipt dated June 27, 2005, verifies the venue of original jurisdiction. Said receipt is marked as Exhibit "2".
26. In 2007, a Decree of Divorce was entered by the Court of Common Pleas of Bucks County, Pennsylvania.
27. Since early 2005, the litigation of the custody of S. S. took place in the Court of Common Pleas of Northampton County. However, the initial filing was in the Bucks County Court of Common Pleas, because Mother's "Complaint for Support" was withdrawn from the Northampton Court on May 31, 2005. Said Order is marked as Exhibit "3".
28. In June 2005, approximately six months after the birth of S. S., Father and Mother agree to proceed with a custody evaluation by Dr. Ronald Esteve. See Exhibit "4" (Petition for Psychological Examination, paragraphs 13-23), Exhibit "5" (email from Mother confirming she is proceeding with Dr. Esteve), and Exhibit "6" (document from Dr. Esteve).
29. Father paid for and initiated his participation with the custody evaluation with Dr. Esteve.
30. Mother canceled her appointment with Dr. Esteve and has failed and/or refused to participate in the custody evaluation with Dr. Esteve.
31. To date, the custody evaluation by Dr. Ronald Esteve has never been completed.
32. In September 2005, the Parties attended a contested custody conference with Master Hogan. At the conference, both Parties requested a custody evaluation, including psychological evaluations (See Exhibit "7" in which even Mother requested psychological evaluations (question 6 on page 2). Despite both Parties requesting the custody

evaluations, the Master denied the requests for a custody evaluation without documenting any reason for the denial and the Court entered an Order without any psychological evaluations (See Exhibit "8", Court Order dated November 16, 2005), which does not order psychological evaluations.

33. On November 16, 2005, the Northampton Court entered an unauthorized Order granting Mother primary physical custody of S. S. and Father partial physical custody with limited visitation/parenting time with S. S.. A copy of this Order is attached as Exhibit "8".

34. Father never agreed that Mother would have primary physical custody of S. S..

35. For the November 16, 2005, Order, the Northampton Court claimed Father, at the custody conference, agreed to granting Mother primary physical custody of S. S. and Father having partial physical custody with the limited visitation/parenting time schedule. Furthermore, Father claims he did not consent to these terms. There is no record of the custody conference and no proof that Father agreed to these terms, however Father's original petition for "Joint Legal and Joint Physical Custody" has never been tried after full discovery. See Exhibit "1" (Amended Complaint, Count III, requesting joint legal and joint physical custody).

36. The Northampton Court Order of November 16, 2005, was entered without the consent of Father.

37. It took the Northampton Court more than two months after the initial contested custody conference to enter any order.

38. The Northampton Court Order of November 16, 2005, was entered without a trial or hearing of any kind.
39. The Northampton Court Order of November 16, 2005, was entered without the completion of any custody evaluation.
40. The Northampton Court Order of November 16, 2005, is invalid because Defendant did not consent to Mother having primary physical custody, it was entered by a Master who did not have authority to grant primary physical custody to Mother, and it was the result of fraud (namely, a false claim that Father consented to the Order).
41. Despite the invalidity of the Northampton Court Order of November 16, 2005, the basic terms of the order (specifically, Mother being granted primary physical custody of S. S.), have never been significantly modified or revised by the Court.
42. Even though Father and Mother had agreed to have Dr. Esteve complete a custody evaluation, the Northampton Court failed to order Mother to participate in the custody evaluation.
43. In December 2005, Mother petitioned the Northampton Court to delay overnight visitation and to require Father to complete unreasonable "communication charts", which are attached as Exhibit "9".
44. Mother was hospitalized for hives, when overnight visitation was finally Ordered. Mother demanded an additional report of the child's activities when separated from S. S.. See Exhibit "10".
45. On January 13, 2006, Father's attorney filed the appended verified Petition for Psychological Evaluation, advancing the initial pretrial

statements, which clarify Dr. Esteve's distinct role as the Parties' "agreed custody evaluator". See Exhibit "4".

46. On February 10, 2006, the attorneys for Father and Mother attended a custody conference with Master Murray. The Parties were excused from participating with said conference.

47. The Northampton Court failed to document the outcome of the custody conference with Master Murray that occurred on February 10, 2006.

48. At said conference, Mother, through her attorney, for the first time, objected to a custody evaluation by Dr. Esteve, claiming Dr. Esteve had a conflict of interest, by falsely alleging he had previously treated Father and/or Mother.

49. The Northampton Court continued to ignore the discovery of S. S.'s best interest, which includes, but is not limited to, the Court's failure to order psychological evaluations, causing Father's attorney to write a letter (attached as Exhibit "11") to Mother's attorney stating, "I do not recall ever having a request for Psychological Evaluation denied by the Court, especially in cases involving young children."

50. The Northampton Court delayed the third custody conference for 224 days.

51. Later, it was determined that Dr. Esteve had never treated Father or Mother and there was no conflict of interest. Exhibit "12" is a letter from Dr. Esteve stating that the Court Order contains "statements reflecting my involvement in this matter are inaccurate..." and confirmed that he was retained solely to perform a custody evaluation and there was no conflict of interest. In reference to the Custody Conference Report, he stated "This is

completely inconsistent with my contact with both of the parties and is simply false.”

52. On September 22, 2006, the Northampton Court entered an Order for Dr. Kinney to complete a custody evaluation.

53. A Custody Conference was held with the Parties that resulted in a Custody Conference Report dated October 12, 2006 (attached as Exhibit “13”). This report documents that Mother’s attorney objected to Dr. Esteve claiming a conflict of interest and the conference officer appointed Dr. Kinney to perform an evaluation. This recommendation was then entered into a Court Order dated September 22, 2006, which is also attached as Exhibit “14”. In reality, the conference officer and Court should have appointed Dr. Esteve because the Parties had previously agreed to Dr. Esteve and there was no conflict of interest, as previously explained and documented.

54. Importantly, this Order of September 22, 2006 materially modifies Dr. Esteve’s role to “marital therapist”.

55. Father never consented to the Court modifying the role of Dr. Esteve to “marital therapist”.

56. Father objected to having Dr. Kinney complete a custody evaluation and requested that Dr. Esteve complete the custody evaluation.

57. Dr. Kinney documents Mother’s claim that she never met Dr. Esteve and confirmed that Dr. Esteve was never the Parties marital therapist.

58. Dr. Kinney never completed a full custody evaluation.

59. However, Dr. Kinney performed psychological testing on Father and Mother. Dr. Kinney delayed the release of the 2006 MMPI-2 raw data. The

appended May 15, 2007 Order required said release “within seventy-two (72) hours”. This Order is marked as Exhibit “15”.

60. The Northampton Court again waited almost 300 days, to again mandate the release of the 2006 MMPI-2 raw data “within twenty-four (24) hours”. The February 29, 2008 Order is marked as Exhibit “16”.

61. The raw data from the testing confirmed Father’s concerns regarding Mother’s mental health and stability. MMPI-2 raw data is attached as Exhibit “17”.

62. Later, Dr. Kinney was disciplined and/or sanctioned for his unethical behavior in another case and he was no longer qualified to complete a custody evaluation. Final Adjudication and Order for Dr. Kinney is attached as Exhibit ‘18”.

63. A Custody Conference was held with the Parties on April 4, 2008 that resulted in a Custody Conference Report (attached as Exhibit “19”). This report recommends that Father’s request for increased time is “deferred”. The conference officer recommends a custody evaluation without prior testing (MMPI-2) and reports, in order to “avoid prolonged litigation.” This recommendation which obstructed the finally released 2006 MMPI-2 raw data, was then entered into a Court Order dated April 4, 2018, which is also attached as Exhibit “20”.

64. This Order improperly restricts the newly appointed evaluator from contact or consultation with previous psychologists because “their reports are the subject of criticism by both parties”.

65. On April 4, 2008, the Northampton Court appointed Dr. Nastasee to perform a custody evaluation. Said Order is attached as Exhibit “20”,

which again “DEFERRED” Father’s request for additional time.

66. Dr. Nastasee declined the appointment as a custody evaluator in this case.

67. On May 9, 2008 Father filed a Motion for Designation of Complex Custody Case and Allowance of Discovery. The Northampton Court delayed hearing for another 190 days.

68. The Northampton Court’s December 16, 2008 Order (attached as Exhibit “21”) “DENIED” Father’s Petition for the “Allowance of Discovery”. Page 12 concludes that “Father’s request that Dr. Nastasee be permitted to contact or consult with Dr. Esteve, Dr. Kinney, and Dr. Gordon will be denied. In accordance with the same reasoning, we additionally deny Father’s request to allow Dr. Nastasee to review Dr. Kinney’s raw data.”

69. The Northampton Court “DENIED” Father’s Plea for Reconsideration of the December 16, 2008 Interlocutory Order. By Order, the Northampton Court, designated this case of first impression as “not complex”, while permanently obstructing the most objective evidence (MMPI-2). Father’s Petition for Reconsideration is attached as Exhibit “22”.

70. The Northampton Court never ruled on the June 26, 2009 Petition for Special Relief marked as Exhibit “23”. While the Court entered an order for a hearing to take place on July 31, 2009, the hearing did not take place and there is no order from any hearing on July 31, 2009, which confirms that no hearing was held on this Petition, and the Court ignored Father’s Petition. Said Petition again advances the Parties agreement for a custody evaluation with Dr. Esteve.

71. In 2010, Dr. Ginsberg completed a custody evaluation but was improperly restricted by Order. Dr. Ginsberg was unable to view the appended MMPI-2 raw data, nor contact other experts. Dr. Ginsberg documents Mother's confirmation, of being coached by her attorney, with the MMPI-2 testing.

72. In 2010, Dr. Gordon completed an expert report that critiqued Dr. Ginsberg's custody evaluation. Dr. Gordon also exposes the maliciously abused process. Said report is attached as Exhibit "24".

73. Thereafter, Father and Mother again agreed that Dr. Esteve would complete a custody evaluation.

74. Again, Mother breached the Parties agreement to have Dr. Esteve perform a custody evaluation and she refused and/or failed to participate in a custody evaluation with Dr. Esteve.

75. From April 2008, until February 2016, the Northampton Court dealt with Petitions for Contempt against Mother and Petitions to modify custody. Generally, the Petitions resulted in Mother being found in contempt and minor changes in Father's partial custody/visitation/parenting time schedule. However, no significant modifications were made, and Mother continued to have primary physical custody of S. S.. See Order dated June 9, 2016, attached as Exhibit "25", which demonstrates the Court holding Mother in contempt (paragraph 1), but not making any significant changes to custody.

76. Importantly, despite numerous requests by Father to have the custody evaluation completed, to void the Order granting Mother primary physical custody, and for a custody trial, the Northampton Court refused and/or failed to do grant these requests. Instead, the Northampton Court delayed any meaningful trial for the custody of S. S..

77. In February 2016, the Northampton Court held a custody trial. The trial was unprepared because the Northampton Court did not allow, and obstructed, the discovery of Mother's mental fitness.

78. The said custody trial was conducted without a full custody evaluation because Mother refused and/or failed to participate in the custody evaluation with Dr. Esteve and the Northampton Court failed to require Mother to participate in the custody evaluation with Dr. Esteve.

79. Any opinions offered by any custody experts were not beneficial to the Court due to the fact that too much time passed between the limited/partial examinations and the custody trial.

80. The Northampton Court did note that Dr. Gordon testified that he reviewed the raw data from the psychological testing and he believed Mother was coached by her attorney, so she would "respond positively to the information in the MMPI testing" and "some of Mother's testing data revealed that she had significant elevation in a scale called psychopathic deviant." See the June 9, 2016 Order attached as Exhibit "25", page 23, lines 12-13 and 14-16.

81. The Northampton Court ignored the evidence that Mother "had significant elevation in a scale called psychopathic deviant" or that she was coached by her attorney. See Transcript of Dr. Gordon's testimony attached as Exhibit "26", pages 187-220 or specifically at page 200.

82. Ultimately, the Northampton Court entered an Order on June 9, 2016 (attached as Exhibit "25"), that essentially maintained the prior Orders by granting primary physical custody of S. S. to Mother

and granting partial physical custody of S. S. to Father.

83. Until February 2016, the Northampton Court did not have a custody trial. This custody action went from early 2005, until 2016, without having a custody trial.

84. The Northampton Court failed to act correctly by allowing eleven years to pass without a custody trial.

85. By allowing an eleven-year delay and by not requiring Mother to participate in the custody evaluation with Dr. Esteve, the Court did not have a current and valid custody evaluation for its decision articulated in the June 9, 2016, Order.

86. After the four-day custody trial, yet again, the Northampton Court unjustly changed Judges. Said act prompted Father's plea for a change in venue. Father's appended Recusal Petition is marked as Exhibit "27".

87. The Northampton Court has failed to even review all of the pleadings and documents filed by Father. Specifically, the President Judge stated, "I have no idea what [Father's] petition for recusal is all about", "Well, I don't know that anyone is going to want to read it", and "I don't want to know about the background unless the background has to do with me" and "it (background) doesn't matter to me at all." The February 2017 Notes of Testimony are attached, marked as Exhibit "28". See page 21 at 18 and page 26 at 21.

88. At one point, the Northampton Court appointed Dr. Lane to perform a Brief Focused Evaluation of Mother; however, the Northampton Court did not give Dr. Lane any focus, so it was impossible for Dr. Lane to perform a Brief Focused Evaluation of

Mother. Dr. Lane's letter to the Court is attached as Exhibit "29".

89. Moreover, the Northampton Court prohibited Dr. Lane from having any communication with Father, which made it impossible for a complete and accurate evaluation to be completed. See Court Order dated December 5, 2016, attached as Exhibit "30", which prohibits third parties from being involved in the evaluation and Dr. Lane's letter to the Court, attached as Exhibit "31", in which he refuses to have communication with Father.

90. The Judges of the Northampton Court have not given adequate and serious consideration to Father's pleadings and claims; instead the Northampton Court simply dismisses Father by characterizing Father in pejorative terms. For example, the Court Order entered on January 5, 2017, attached as Exhibit "32", the judge says, "it was unsurprising that this is Father's sixth petition for contempt" and that Father's answer to Mother petition "included attachments nearly one inch thick" (page 3). Father's pleas are improperly belittled by the Northampton Court as "a waste of time" and "appeal not worthy of further comment". Father is inappropriately diminished to a "serial pro se litigant", See PA RAP Statement dated 1/12/17 marked as Exhibit "33".

91. Father has ADD, which is a protected disability, and the Northampton Court failed to provide adequate accommodations and time for Father to present his case at trial. The existence of Father's protected disability is another important reason for the Court to read all of Father's pleadings and to consider the background of this matter. See Exhibit "34".

92. Father tried to obtain the court's cooperation and accommodation for his protected disability by writing the Court a letter dated April 25, 2017, attached as Exhibit "35", requesting an accommodation; however, the Court again ignored Father.

93. On October 28, 2016, the Northampton Court entered an Order for S. S. to engage in counseling; however, the Court did not even consider Father's choice of counselors.

94. The Northampton Court has concluded, at various times, that Mother is in contempt for violating Court Orders, such as her violation of Father's rights of joint legal custody, acting in ways that alienate the child from Father, and violating Father's rights of partial physical custody.

CAUSE OF ACTION

95. Father is desperately pleading with this Supreme Court to exercise its King's Bench Power and extraordinary jurisdiction to correct the errors of the Northampton Court, protect Father's constitutional rights, and, most importantly, to act in the best interests of the child.

96. At first glance, it may appear that Father is, as claimed by the Northampton Court, a "serial *pro se* litigant" who is not satisfied with the lower court rulings. However, that is not the case. Father is begging this Court to act on behalf of the best interests of the child. The Northampton Court has made many errors, all of which have damaged the child.

97. The Northampton Court has made numerous errors, which will be further explained hereafter, which should cause this Court to exercise its King's Bench Power and extraordinary jurisdiction.

98. Initially, this Court should note that it took eleven years for the Northampton Court to have a custody trial. This eleven-year delay should get this Court's attention and cause it to act.

99. In addition, there are numerous other errors that should cause this Court to act.

100. The Northampton Court entered a Custody Order based on the recommendations of a Master, not upon the determination of a Judge of the Northampton Court. Under Pennsylvania Law, a Master does not have the power to grant primary physical custody.

101. The Northampton Court entered a Custody Order without providing Father a trial or evidentiary hearing. This Order remained substantially in effect for the eleven years until the custody trial. The Order should never have been entered without a trial or evidentiary hearing and then the error was made worse by having the order be in effect for over eleven years.

102. The Northampton Court granted Mother primary physical custody of S. S. without providing Father a trial or evidentiary hearing.

103. The Northampton Court entered a custody order and granted Mother primary physical custody of S. S. without allowing Father to obtain a Custody Evaluation involving both Parties, without just cause, and without proving Father to be unfit.

104. The Northampton Court entered a custody order and granted Mother primary physical custody of S. S. without requiring Mother to participate in a custody evaluation with Dr. Esteve, even though Mother had agreed to undergo a custody evaluation with Dr. Esteve. After thirteen years, this case remains unprepared for trial.

105. The Northampton Court entered a custody order and granted Mother primary physical custody of S. S. without considering timely psychological evidence, testing, and data demonstrating that Mother suffers from borderline personality disorder.

106. The Northampton Court entered a custody order and granted Mother primary physical custody of S. S. that was allegedly agreed to by Father; however, Father had not agreed to said custody order.

107. More than two months after the initial, contested custody conference, the Northampton Court entered a custody order and granted Mother primary physical custody of S. S. for "primary custody" even though "primary custody" was not an issue in the litigation/pleadings.

108. The Northampton Court entered an unauthorized, fraudulent custody order that continues to illegally seize miscalculated support payments.

109. The Northampton Court entered an unauthorized custody order that failed to consider the best interest of S. S.. Among other things, this fraudulent Order detrimentally required S. S. to travel one hour each way between parents.

110. The Northampton Court "deferred" Father's repeated pleas for vacation, right of first refusal and custody evaluation from 2005 until 2010.

111. The Northampton Court failed to act in a speedy manner in determining the custody of S. S..

112. The Northampton Court's failure to document the February 10, 2006 custody conference obstructed the administration of law; intending to conceal case status, abuse discovery, delay hearing and cover up

the fraud committed upon the Court, by Officers of the Court.

113. Jurisdictional fraud motivated the Northampton Court's unchallenged and pre-meditated allowance of relocation, without any consideration for the discovery of a child's best interest.

114. The Northampton Court failed to consider Mother's motive when it granted her Petition to relocate with the child. Mother's alienating motives to relocate remain obfuscated, by the Northampton Court's failure to test Mother's motives (*Gruber v. Gruber*).

115. In violation of 231 Pa. §§ 1915.17 & 1930.4, Father learned of Mother's relocation after the fact through his attorney, whereas the Northampton Court conditionally offered Father shared physical custody, if he would relocate to the foreign venue.

116. Because Father refused to relocate, Master (now Judge) Murray and Mother denied Father's repeated pleas for vacation, equitable visitation, right of first refusal and custody evaluation for five years. Father's attorney informed him that he would never get the change in outcome, necessary for actionable cause.

117. The Northampton Court proceeded with the custody action involving S. S., even though venue should have been in Bucks County, Pennsylvania.

118. The Northampton Court materially modified the role of Dr. Esteve to act as a "marital therapist" instead of agreed custody evaluator. The completion of Dr. Esteve's agreed evaluation was necessary and remains necessary for trial preparation.

119. The Northampton Court obstructed Father's discovery in the underlying custody matter. The

delay caused by misconduct, permanently conceals Mother's avoidance of evaluation and motive to relocate from future evaluators, with perhaps the exception of Dr. Esteve.

120. The Northampton Court disallowed and/or ruled out all possible neutral custody evaluators which has chronically retarded trial preparation.

121. Without adequate basis, the Northampton Court disallowed Dr. Esteve from being the custody evaluator.

122. The Northampton Court appointed Phil Kinney to serve as a custody evaluator even though he was not qualified and had been sanctioned and reprimanded by the Bureau of Professional and Occupational Affairs for violating ethical principles and deviating from professional guidelines and standards.

123. Dr. Kinney reviewed the Father's unilateral evaluation and MMPI-2 raw data with Dr. Esteve. For unknown reasons, Dr. Kinney failed to document his review or conversation with Dr. Esteve, while considering Mother's therapist a "source of information". Thereafter by Order, the Northampton Court prohibits evaluators, from discussing this case with other experts.

124. The Northampton Court's December 16, 2008 Interlocutory Order obstructs future evaluator's from reviewing the appended 2006 MMPI-2 raw data and prohibits future evaluator's from having contact with prior evaluators and other experts.

125. Dr. Ginsberg's 2010 custody evaluation confirmed that Father should not have been denied vacation and other parental rights for five years.

126. Dr. Ginsberg reports that Mother "does not understand the importance to S. S.'s development of

having Father involved”, Mother “minimizes the importance and nature of Father’s relationship with their child”. Said report also documents Mother’s claim of being coached by her attorney with the MMPI-2. See Court Order of June 29, 2016, pages 23 and 29 marked as Exhibit “25”.

127. However, by Court Order, the evaluator was restricted from viewing the appended MMPI raw data or having contact with Dr. Gordon to understand how the most objective evidence was tampered with, as described in Dr. Gordon’s appended 2010 expert report.

128. The Northampton Court obstructed MMPI-2 raw data by Order. In this case, the most relevant factor (#15 mental fitness) is discovered by the most objective evidence, however further discovery remains abandoned by Order.

129. Father’s questions concerning Mother’s mental fitness, are validated by Dr. Gordon’s expert testimony, relevant to the obstructed MMPI-2 raw data. However, the Court’s ongoing failure to investigate or appropriately address Father’s credible claims about the abused process, enables Mother to question the reliability of Father’s judgment.

130. The Northampton Court abandoned the factual procedural history by failing to obtain “the entire record”, as stipulated by agreement. See the Notes of Testimony Volume IV page 190, marked as Exhibit “36”. The Northampton Court abused the entire court process and Father’s Due Process rights by failing to consider the entire record.

131. Further violating due process, the trial Judge offered misinformed opinions and conclusions about

the discovery of Mother's mental fitness and Father's judgement thereof, after the reconsideration hearing.

132. The Northampton Court routinely changed judges in the custody action involving S. S., which created a situation in which the Court failed to consider all of the evidence as a whole and act consistently with orders by prior judges.

133. The President Judge of the Northampton Court admittedly did not read all of Father's pleadings and documents and stated that he did not want to know about the background of the case.

134. The Northampton Court attempted to quash Father's Recusal Petition by entering an Order, stating that the Order resolves all pending motions and petitions, even though the Order did not resolve all pending motions and petitions.

135. The Northampton Court's fraud further obstructed discovery by errantly quashing Father's fifth petition for contempt. The Northampton Court failed to review Mother's continuing contemptuous conduct after the trial. See Father's petition with only two exhibits "B" and "S" marked as Exhibit "37". The review of Mother's interference with telephone calls, was also improperly obstructed. Text messages reveal the control exercised by Mother over S. S.; "should I call my dad back and if I do should I tell him where I am." Mother asks S. S., "Are you deleting our texts?" "My dad just called should I tell him that in here." Mother instructs, "You don't have to call him back if you don't want to."

136. Importantly, S. S. has been alienated from Father since birth. The May 7, 2009 document, marked as Exhibit "38", evidences the reality of S. S.'s circumstance with telephone contact. Because of

the January 5, 2017 Order, S. S. rarely returns calls. The last paragraph of Exhibit "32", page 2 directs either party to "file a petition to enforce this custody agreement against Daughter" (i.e. when calls aren't returned). By Order, the Northampton Court has improperly restricted Father's contact with S. S. for weeks at a time.

137. The abused discovery undermines the Court's understanding of the Parties' perceptions, motives and abilities. The appended April 30, 2015 correspondence, marked as Exhibit "39", evidences that Mother is unable to recognize nor acknowledge her ongoing contemptuous conduct and behaviors.

138. Furthermore, Mother is unable to differentiate S. S.'s best interest from her own. For example, on page 152 of the Notes of Testimony, Volume III (Exhibit 26), the Court asks, "and where do you sleep?" Mother "we sleep in the Master bedroom." Court "In the same bed with him?" Mother "uh-huh." Court "Next door to her?"

139. The January 5, 2017 Order (attached as Exhibit "32") does not require the Parties to co parent. The abused discovery has crippled the Northampton Court's ability to adjudicate relevant issues. The Northampton Court has empowered Mother to unilaterally dictate the schedule without remedy. For example, Father's Day weekend has been taken from Father, each of the last two years (inter Alia) and there is nothing Father can do about it.

140. The Northampton Court and the Judges and Masters involved in the custody action involving S. S. failed to read and consider all pleadings filed by Father.

141. The Northampton Court failed to oversee and regulate the conduct of Masters involved in the custody action involving S. S..
142. The Northampton Court failed to require Mother to comply with agreements she made with Father, specifically to undergo a full custody evaluation with Dr. Esteve.
143. The Northampton Court routinely denied Motions and Petitions by Father without fully considering said Motions and Petitions and without oral argument. See Exhibit "40".
144. The Northampton Court failed to act upon, or rule upon, Motions and/or Petitions filed by Father.
145. The Northampton Court appointed Dr. Lane to evaluate Mother but refused to allow Father to communicate with Dr. Lane.
146. Due to the Northampton Court's improper restrictions, Dr. Lane was unable to learn about unilateral schedule changes made by Mother. Whereas, said modifications to the Court Order, alienated S. S. from Father for many weeks at a time. Dr. Lane was wrongfully impeded by Order, from understanding relevant issues, that transpired during the time of the assessment.
147. The Northampton Court ordered a Brief Focused Evaluation without having any focus, when the Court should have ordered a full custody evaluation.
148. The Northampton Court allowed the minor child, S. S., to be involved in evaluations even though the Parties agreed that S. S. would not be involved.
149. The Northampton Court allowed the minor child, S. S., to be involved in evaluations even though the Judge opined that S. S.'s involvement, is

contrary to the child's best interest. See page 30 at 23 and page 50 at 1, February 2017 Notes of Testimony, marked as Exhibit "28".

150. The Northampton Court allowed Masters to act outside the scope of the law.

151. The Northampton Court failed to adequately supervise Masters.

152. The Northampton Court failed to accommodate Father's protected disability.

153. The Northampton Court allowed Mother to have S. S. participate in therapy without considering Father's choice of counselor for S. S..

154. The Northampton Court violated Father's right of joint legal custody and right to raise his child by failing to consider his choice of counselor for S. S..

155. The Northampton Court failed to protect the constitutionally protected relationship of a parent and child.

RELIEF SOUGHT

156. Father begs this Court to intervene in this matter. This Court should investigate the fraud committed by the Northampton Court, such as entering an alleged consent order for Mother to have primary physical custody of the child when Father never consented to Mother having primary physical custody of the child.

157. This Court should provide **meaningful remedy** for Father and for the best interests of the child. The Northampton Court made an initial error by granting Mother primary physical custody by improperly relying on a Master's recommendation and by **not** having a custody trial. Thereafter, the Northampton Court has failed to provide any meaningful remedy to Father; instead, the Northampton Court has perpetuated the initial error

by continuing the initial invalid court order without any significant and/or meaningful modifications.

158. A full custody evaluation needs to be performed and timely considered by the Court. The Court needs to hear expert testimony regarding the MMPI-2. The Northampton Court continues to interfere with the release and consideration of the most objective evidence (MMPI-2), which remains abandoned by Order.

159. To discover what is best for S. S., this Court must fairly assess Mother's relocation motives and avoidance of evaluation. The completion of Dr. Esteve's agreed custody evaluation remains essential for trial preparation. The Mother must be Ordered to honor her agreement (emphasis added).

160. This Court needs to intervene because S. S. is being harmed by Mother having primary physical custody, even though she continually violates court orders and has been found in contempt. Despite the Northampton Court finding Mother to be in contempt, the Northampton Court has failed to take any meaningful action in response to Mother's violations and contempt. Such lack of meaningful action by the Northampton Court is causing harm to S. S..

161. The current Order does not require Mother to co-parent.

162. This Court must intervene because the entire custody action should have taken place in Bucks County because Bucks County has always been the residence of Father and Bucks County was the residence of Mother, until she moved just a month before giving birth. Nevertheless, the Northampton Court has failed to recuse itself or send the matter to Bucks County; instead the Northampton Court

continues to make errors and act in ways that are detrimental to the best interests of S. S.. Since there has been jurisdictional fraud, all orders by the Northampton Court are invalid and void and this Court should immediately send the matter to Bucks County.

163. Custody proceedings are intended to be "fast tracked"; however, it took the Northampton Court eleven years to have a custody trial. At this point, S. S. is 13 ½ years old and is being harmed by orders entered by the Northampton Court. Time is running out to help S. S.. Since the Northampton Court has failed to act timely and S. S. is being harmed, this Court must act immediately to act in the best interests of S. S. and correct the errors of the Northampton Court.

Wherefore, the applicant again respectfully requests this Court exercise original jurisdiction and grant the applicant the following relief and other such relief as this Court finds appropriate:

- (a.) Seal the record due to the sensitivity of the attachments;
- (b.) Immediately assume plenary jurisdiction of this matter, or alternatively transfer jurisdiction/venue of the custody action to the Common Pleas Court of Bucks County;
- (c.) Issue an expedited schedule for the resolution of this action, including expedited times for answering this application;
- (d.) Issue an Order voiding the November 16, 2005 Custody Order, vitiating and vacating all prior opinions, evaluations and Orders;

- (e.) Issue an Order awarding Father primary custody of S. S., until this Court makes a final determination on the merits;
- (f.) Issue an Order appointing Dr. Ronald J. Esteve as the Custody Evaluator, but not involve S. S. in said evaluation;
- (g.) Issue an Order assessing fees and damages against Respondent in an amount calculated by the Court; and
- (h.) Order any other relief, as this Honorable Court shall deem necessary, just and proper under the circumstances.

Respectfully submitted,

Dated: July 27, 2018



E. Thomas Scarborough III, *pro se*

Kings Bench (126 MM 2018) abridged exhibits

Exhibit 1 pages 1, 2

SHARRON L. REX, ESQUIRE
1664 DeKalb Pike
Blue Bell, PA 19422
Identification No. 83860 Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION-DIVORCE

E. THOMAS SCARBOROUGH, III
3876 Applebutter Road
Perkasie, PA 18944
SSN: 162-60-4754
Plaintiff

vs. Docket No. 05-61942-D-26

CHRISTY J. SCARBOROUGH
148 Virginia Drive
Nazareth, PA 18064
SSN: 209-46-2620

AMENDED DIVORCE COMPLAINT

COUNT 1

Request for No-Fault Divorce under Section 3301 (c) & (d) of the Divorce Code

1. Plaintiff is E. Thomas Scarborough, III, who currently resides and has resided at 3876 Applebutter Road, Perkasie, Bucks County, Pennsylvania, since approximately April 1, 2001.
2. Defendant is Christy J. Scarborough, who currently resides and has resided at 148 Virginia Drive, Nazareth, Northampton County, Pennsylvania, since November 23, 2004; however, she resided in Bucks County for approximately ten years prior.

Page 1 of 5

3. Plaintiff and/or Defendant have been bona fide residents in the Commonwealth for at least six months immediately previous to the filing of this Divorce Complaint.
4. The Plaintiff and Defendant were married on December 31, 2003, in Northampton County, Pennsylvania.
5. There have been no prior actions of divorce or for annulment.
6. The marriage is irretrievably broken.
7. Plaintiff has been advised that counseling is available and that Plaintiff may have the right to request that the court require the parties to participate in counseling.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a Decree of Divorce.

COUNT II
Request for Equitable Distribution of Marital
Property

8. The prior paragraphs are incorporated by reference.

9. Plaintiff and Defendant have acquired property, both real and personal, during their marriage from December 31, 2003 until November 23, 2004, the date of separation.

10. Plaintiff and Defendant have acquired, prior to their marriage or subsequent thereto, "non-marital property" which has increased in value since the date of the marriage and/or subsequent to its acquisition during the marriage, which increase in value is "marital property."

11. Plaintiff and Defendant have been unable to agree as to an equitable division of said property.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court to equitably divide all marital property.

COUNT III

Request for Child Custody

12. The prior paragraphs are incorporated by reference.

13. Plaintiff seeks Joint Legal and Joint Physical Custody of Selah Jean Scarborough (DOB: 12/27/2004). The child was not born out of wedlock.

Page 2 of 5

Exhibit 2

PATRICIA L. BACHTLE

PROTHONOTARY COUNTY OF BUCKS DOYLESTOWN, PA 18901 (215) 348-6191	PATRICIA L. BACHTLE PROTHONOTARY COUNTY OF BUCKS DOYLESTOWN, PA 18901 (215) 248-6191
---	--

DUPLICATE RECEIPT

#205 1 19904 P D#2005 61942 FOR SCARBOROUGH 06/27/2005 15:32	DUPLICATE RECEIPT #205 1 19903 P D#2005 61942 FOR SCARBOROUGH 06/27/2005 15:31
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<u>CK# 0156</u> 42.00	<u>CK# 0156</u> 293.00
TOTAL RCVD 42.00	TOTAL RCVD 293.00
TOTAL PAID 42.00	TOTAL PAID 293.00
CHANGE 0.00	CHANGE 0.00
THANK YOU- AEA	
THANK YOU- AEA	

PATRICIA L. BACHTLE
PROTHONOTARY
COUNTY OF BUCKS
DOYLESTOWN, PA 18901
(215) 348-6191

DUPLICATE RECEIPT

#205 1 19905 P D#2005 61942 FOR SCARBOROUGH 06/27/2005 15:33

<u>CK# 0156</u> 47.00	
TOTAL RCVD 47.00	
TOTAL PAID 47.00	
CHANGE 0.00	
THANK YOU- AEA	

Exhibit 8 page 1

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION-LAW**

E. THOMAS SCARBOROUGH

Plaintiff

**No. C-0048-
CV-2005-02186**

v.

CUSTODY

**CHRISTY J. SCARBOROUGH
Defendant**

ORDER OF COURT

AND NOW, this 16th day of November, 2005,
following a conference before the Custody
Conference officer, upon agreement of the parties, it
is hereby ORDERED and DIRECTED, as follows:

1. E. Thomas Scarborough ("Father") and Christy J. Scarborough ("Mother") shall have shared legal custody of their minor child, Selah Jean (age 8 ½ months), including the legal right to make major decisions affecting the best interests of the child, including but not limited to medical, dental, religious, educational and child care decisions. Each parent shall be entitled to complete information from any school, pediatrician, general physician, dentist, specialist or consultant, child care provider, extra-curricular facility or program. Both parties

shall be provided with copies of any reports given by any school or any of the above providers; if one parent receives such a report, that parent shall send a copy of the report to the other. Except as prevented by emergency, the parties shall mutually agree on all major medical care, including psychiatric and psychological care for the child and neither party shall hospitalize or seek other than routine medical or dental treatment without the other party. The parties shall seek and make every good effort to determine mutually all matters relating to the health, education (including extra-curricular activities and programs), child care and general welfare of the child and the parties agree to cooperate and shall cooperate with respect to the child so as to advance to a maximum degree of the child's health, emotional and physical well being and to give and afford the child affection of both parents and sense of security. The custodial parent shall assure the child's attendance at regularly scheduled extra-curricular activities, birthday parties, and such other similar events.

2. Mother shall have primary physical custody of the child, subject to periods of partial physical custody with Father as follows:

Exhibit 33

April 25, 2017

Judge Baratta,

On February 8, 2017 you denied my request for accommodation from the Court, for a protected disability under the Americans with Disabilities Act 42 U.S.C.A & 12132.

At that time you requested documentation evidencing the diagnosis of ADD. With the understanding that the record is voluminous, I have attached hereto a copy of Dr. Cosden's report from the record.

At times, I have difficulty organizing my thoughts when making oral arguments. Specifically, I requested that the Court accommodate my protected disability, by first reading what is put to writing, then ask questions about my averments. You denied my request stating, "*No. That's not how it works. That's not how it works.*" (Ex. 15 at p. 7, ¶¶ 19-25, N.T. Feb. 8, 2017).

Independent of my request, it would seem beneficial to consider the evidence, to gain understanding.

Sincerely,



E. Thomas Scarborough III

Cc: Richard Santee

Exhibit 34

CENTRAL BUCKS FAMILY PRACTICE, P.C.

BOARD CERTIFIED FAMILY PRACTICE



BALIWICK OFFICE CAMPUS

SUITE 41
252 WEST SWAMP ROAD
DOYLESTOWN, PA 18901
215-348-1706

COMMONWOODS OFFICE CAMPUS
SUITE F1
2370 YORK ROAD
JAMISON, PA 18929
215-343-5444

DATE: 7/27/18

Thomas SCARBOROUGH
3876 APPLEBUTTER RD
PERKASIE, PA,18944

Thomas has a diagnosis of ADD F90.0

Sincerely,

/s/ Robert Lewcun, DO
ROBERT LEWCUN, DO

Exhibit 35

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION- LAW**

**E. THOMAS SCARBOROUGH, III,
Plaintiff,
NO. 205-2186**

**v.
CHRISTY SCARBOROUGH,
Defendant.**

**PENNSYLVANIA RULE OF APPELLATE
PROCEDURE 1295(a) STATEMENT**

This is an appeal by a serial *pro se* filer.

A trial on the Appellant's Contempt Petition before the Court was held on January 3, 2017, which generated my January 5, 2017 order denying and dismissing the Defendant's Contempt Petition.

Our Order speaks for itself.

We did not request the Defendant to file a Statement of Matters Complained of on Appeal, because this appeal is not worthy of further comment.

BY THE COURT:

/s/ Stephen G. Baratta
STEPHEN G. BARATTA, P.J.

Date: January 12, 2017

Exhibit 40

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION- LAW**

**E. THOMAS SCARBOROUGH, III,
Plaintiff,
v.
CHRISTY SCARBOROUGH,
Defendant.**

NO. 205-2186

ORDER OF COURT

AND NOW, THIS 21ST DAY OF November, 2016,
Defendant's request for Reconsideration is DENIED
without a hearing.

BY THE COURT:

**/s/ Stephen G. Baratta
STEPHEN G. BARATTA, P.J.**

Protected Disability Rules

42 U.S.C. §12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [1] Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101-336, title V, § 502, July 26, 1990, 104 Stat. 370.)

42 U.S.C. §12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101-336, title II, § 202, July 26, 1990, 104 Stat. 337.)

28 CFR §35.160 Communication requirements

(a)(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

(2) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.

(2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(c)(1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.

(2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except -

- (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
- (3) A public entity shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(d) *Video remote interpreting (VRI) services.* A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides -

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- (3) A clear, audible transmission of voices; and
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

42 U.S.C. §2000d-7. Civil rights remedies

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99-506, title X, Sec. 1003, Oct. 21, 1986, 100 Stat. 1845.)

§504 Rehabilitation Act of 1973, codified 29 U.S.C. §794 Nondiscrimination under Federal grants

(a) Promulgation of rules and regulations
No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of career and technical education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

- (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
 - (B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.
- (c) Significant structural alterations by small providers. Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.
- (d) Standards used in determining violation of section The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510,[1] of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

Constitutional Provisions abridged

Amendment 1

or the right of the people ...to petition the Government for a redress of grievances.

Amendment 5

No person shall be ... deprived of life, liberty, or property, without due process of law.

Amendment 14

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.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Federal Rules of Civil Procedure

F.R.C.P. 8(b)(6) Effect of Failing to Deny.

An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

F.R.C.P. 9(b) Fraud or Mistake.

In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

F.R.C.P. 56(e) Fail to Properly Address a Fact.

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order.

F.R.C.P. 60(d)(3) Relief From a Judgement.

(3) set aside a judgment for fraud on the court.

Pertinent State Statutes

18 Pa. C.S.A. §302(b)(3) Reckless Disregard

(b)(3) A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

23 Pa. C.S.A. §5323(a)(c)(d) Award of Custody.

(a) Types of award. --After considering the factors set forth in section 5328 (relating to factors to consider when awarding custody), the court may award any of the following types of custody if it is in the best interest of the child.

(c) Notice. --Any custody order shall include notice of a party's obligations under section 5337 (relating to relocation).

(d) Reasons for award. --The court shall delineate the reasons for its decision on the record in open court or in a written opinion or order.

Pertinent Judicial Procedure

28 U.S.C. §1331. Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1343 Civil Rights

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section-

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. §1361 Compel Performance of Duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 U.S.C. §1367 Supplemental Jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental

jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

- (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if-
 - (1) the claim raises a novel or complex issue of State law,
 - (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
 - (3) the district court has dismissed all claims over which it has original jurisdiction, or
 - (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
- (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.
- (e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

28 U.S.C. §2072 Power to Prescribe

- (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
- (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict

with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

28 U.S.C. §2106 Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Chapter 21 Civil Rights

42 U.S.C. §1981 Equal Rights

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. §1983 Deprivation Civil 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.C. §1985(3) Deprivation Conspiracy

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.

42 U.S.C. §1986 Neglect to Prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. §1988 Vindication Civil Rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be

held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

Criminal procedure

18 U.S.C. §241 Conspiracy Against Rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured— They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. §242 Deprivation Under Color of Law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the

punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. §1001(a) Statements or Entries

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of

imprisonment imposed under this section shall be not more than 8 years.

18 U.S.C §1038(b) False Information- Hoaxes

(b) Civil Action.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.