

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAI ME HERNANDEZ,)
)
 Plaintiff)
)
 vs.) No: 09 C 661
)
 COOK COUNTY SHERIFF TOM DART, et.al.)
)
 Defendants)

NOTICE OF FILING

TO: Clerk of the Court Jamie Hernandez
U.S. District Court
219 S. Dearborn
Chicago, Illinois 60604

You are hereby notified that on the 30th day of April, 2009, I caused to be electronically filed with the Office of the Clerk of the Court, U.S. District Court, 219 S. Dearborn, Chicago, Illinois, Motion To Dismiss Pursuant to F.R.C.P. Rule 12(b)(1), (3), and (6), copies of which are hereby served upon you.

RUSS STEWART Attorney At Law
805 West Touhy Avenue Park Ridge, Illinois 60068
(847) 692-3350 #24584

PROOF OF SERVICE BY ELECTRONIC COURT FILING AND MAILING

I, RUSS STEWART, the attorney, certify that I served this notice by electronic filing with the Federal Court and mailing to the above addressees before on April 30, 2009,.

[] Under penalties as provided Date: April 30, 2009
by law pursuant to ILL.REV.
STAT. CHAP 110-SEC 1-109 I
certify that the statements
set forth herein are true
RUSS STEWART

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAIME HERNANDEZ,

Plaintiff

vs.

COOK COUNTY SHERIFF TOM DART, et.al.)

Defendants

No: 09 C 661

MOTION TO DISMISS PURSUANT TO F.R.C.P., RULE 12(b)(1), (3) and (6)

NOW COMES one of the Defendants herein, RUSS STEWART, by and through his MOTION TO DISMISS PURSUANT TO F.R.C.P., RULE 12(b)(1), (3) and (6), says as follows:

1. Plaintiff has filed a jumbled, 30-page pro se complaint which contains, containing 159 paragraphs, at least 15 identifiable counts, and 6 additional and duplicative counts, alleging inter alia, various civil rights, equal protection and due process violations suffered by him as a result of his arrest and imprisonment; that the counts include false imprisonment, unreasonable seizure, malicious prosecution, common law civil conspiracy, retaliation, and alienation of spousal affection.

2. That Defendant, Russ Stewart, was Plaintiff's attorney in the criminal trial before Judge Donnelly in 2008.


3. That the only count relevant to Defendant Stewart is that characterized as "Part XVI: Count Fifteen," on page 25 of the complaint.

4. That the criminal proceeding was held in state court.

5. That, pursuant to F.R.C.P, Rule 12(b)(1), (3) and (6), a motion to dismiss a pleading on a party may be brought if the Federal Court lacks jurisdiction over the subject matter, if the court is not the proper venue, and/or if the complaint fails to state a cause of action.

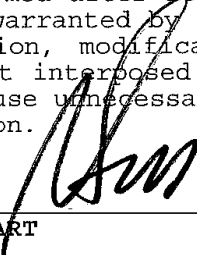
6. That the Federal Court is (1) the improper venue for a legal malpractice action, (2) does not have subject matter jurisdiction, and (3) the allegations fail to state a valid cause of action, stating only that Defendant "did not provide counsel which satisfied minimal levels of competence in the area of defense against criminal charges. Further, Plaintiff's prayer for relief seeks a judgment in the Court "against the above named Defendants."

WHEREFORE, pursuant to F.R.C.P, Rule 12(b)(1), (3) and (6), Defendant STEWART prays that "Part XIV: Count Fifteen" be stricken and dismissed with prejudice.



RUSS STEWART

Pursuant to Federal Rules, the undersigned, **RUSS STEWART**, certifies that he has read the above pleading and that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.



RUSS STEWART

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