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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 21 2010
BY D. MARK JONES, CLERK
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

Fred W. Mauney, Jr.)

Plaintiff, Pro Se)

v.)

United States Postal Service,)
et al.,)

Defendant.)

) Civil No. 2:01CV-179K

) PLAINTIFF'S MEMORANDUM IN SUPPORT
) OF MOTION TO SET ASIDE JUDGEMENT

The plaintiff pro se hereby submits the following memorandum in support of it's Motion to Quash.

STATEMENT OF FACTS I

First let the Plaintiff say that not only are the U.S. Postal Service (USPS) and the US Attorney's Office's positions outrageous, they are out and out absurd.

First set of facts

- 1- Does the United States Postal Service offer a reward of \$100,000 for aiding in the arrest and conviction of the murderer of a postal employee for "on account of the job". The answer is YES.

The only reason the Postal Worker Lee Parker was where he was on that morning

was "on account of the job". He was on his way to work.

- 2- Did Fred Mauney aid in the arrest and conviction of U.S. Postal employee Lee Parker. The answer is unequivocally "yes". Lee Parker's murderer got an extra 30 years for trying to kill eyewitness Fred Mauney at the scene of Lee Parker's Murder.
- 3- A reward is a promise to pay and this reward is a promise to pay in the name of the United States of America.
- 4- It is the U.S. Attorney General, the U.S. Justice Department or the U.S. Attorney's job to ascertain the facts in the name of the United States of America and if Plaintiff has a legitimate claim, to order the U.S. Postal Service to pay said reward.
- 5 - The record shows that the U.S. Attorney has violated not only their own ethics and sworn responsibilities, but also directives from U.S. Code - Title 5, U.S. Supreme Court decisions, Attorney Generals' memorandums, directives, orders, their own ethics handbook and other Federal Law on Attorney conduct by reverting to lies, Fraud and deception. The U.S. Attorney's Office has committed "FRAUD UPON THE COURT" to obtain rulings and orders with the aid of U.S. Magistrate Samuel Alba and U.S. District Court Judge Dale Kimball.
- 6- That a Judge shall uphold the integrity and competency of the court and shall avoid impropriety and even the appearance of impropriety.
- 7- This is a judgment resulting from a default and all litigation should be decided on its merits.

Set of Facts II

- 1- The lead attorney notified as the counsel for the defendants in this civil action: Kurt C. Lusty, gives '6021 S. Kamas Drive Salt Lake City, UT, as his address, which turns out to be his home address in Taylorsville, Utah, a bedroom community within the Salt Lake City metropolitan area.

- 2 – The second time Kurt Lusty's name appears on court documentation he's all of the sudden now a Special Assistant U.S. Attorney with a new address of 9350 South 150 East, Suite 800, Salt Lake City, Utah. No such address exists in Salt Lake City. Look it up and see. But such address DOES exist in Sandy, Utah, 10 miles south of Salt Lake City.
- 3- There is no Law practice, Law Firm, U.S. Attorney's office, or Branch office at this location (9350 South 150 East, Suite 800 , Sandy, Utah).
- 4- Plaintiff has now learned this address is occupied by the South East regional Law Office of the United States Postal Service and Kurt C. Lusty is presently an employed in the USPS's legal department as a USPS Attorney. Something just doesn't stink here, it's ROTTEN!
- 5 – Plaintiff discovers that U.S. Magistrate Samuel Alba and U.S. District Court Judge Dale Kimball knew of this but that Plaintiff was never notified or made aware of this conflict of interest constituting clear and convincing evidence of Misconduct, Legal Malpractice through the use of lies, deception and fraud by officers of the court constituting “ FRAUD UPON THE COURT”.

SET OF FACTS III

- 1- Defendant's attorney Kurt C. Lusty files false and deceptive motions with the court. His “ MOTION TO DISMISS” for failure of Plaintiff to obey Rule 4 of the Federal Rules dealing with summons. If defendants haven't been notified, then why is he filing “MOTION TO DISMISS”, or other papers as their attorney. Secondly, Kurt C. Lusty's motion to dismiss is fraudulent on it's face. Specifically he files the “MOTION TO DISMISS” 57 days after Plaintiff has filed the initial complaint. Rule 4 clearly states Plaintiff has 120 days to affect service. Does Kurt C. Lusty or

any of his superiors as well as U.S. Magistrate Alba and U.S. District Court Judge Dale Kimball have any idea what the rules are? Furthermore, one just has to look at the docket sheet to clearly see that the Plaintiff Fred Mauney has filed a Forma Pauperis motion and an order was signed by Judge Boyce to proceed in Forma Pauperis.

2 - Later, plaintiff Fred Mauney files a Motion for Official Service of Process. Now Plaintiff Fred Mauney is waiting for the judge's order to affect service and the Federal Marshall's to do their job.

ISSUE

Has the United States Postal Service and the United States Postal Inspection Service, through it's attorneys, the Department of Justice, the Attorney General, the US Attorney (UTAH), along with U.S. Magistrate Samuel Alba and U.S. District Judge Dale Kimball acted as a cabal, in bad faith, through misconduct, "Conflict of Interest", lies, deception, allowing impropriety into the court, constituting "FRAUD UPON THE COURT".

ARGUMENT

The documentation and exhibits speak for themselves of misconduct and improprieties in the due processes of the courts' handling of Fred Mauney's case against the U.S. Postal Service, U.S. Justice Department and U.S. Attorney's Office. Plaintiff's rights guaranteed by the United States constitution have been violated, specifically the right to address the government for grievance, due process, and equal protection clauses. Kurt Lusty should have been rebuked by the court when he filed his first motion to dismiss. Fred Mauney should have been made aware that Kurt Lusty was a USPS attorney, operating in their offices, a clear conflict of interest in this circumstance. Civil procedure rule 4 is to assure the court that the

defendants have been notified (served). Kurt Lusty appeared in court, proclaiming he had no knowledge of the civil action (**Civil No. 2:01CV-179K**) and had not been “properly” notified, yet he is filing motions against what he claims not to know anything about. For Kurt Lusty to act on behalf of the defendants in any capacity he would have been retained by special appointment from the U.S. Attorney and approved of by the U.S. Attorney General, John Ashcroft. How can he achieve a special appointment without being notified as rule 4 requires. This is in direct violation of U.S. Supreme Court decision *Berger v. United States*.

CONCLUSION

The court has no choice but to grant this motion to set aside judgment under Federal Rules of Civil Procedure ,Civil Rule 60(b). Not to so would be an abuse of discretion and would constitute an appealable decision under the rules.

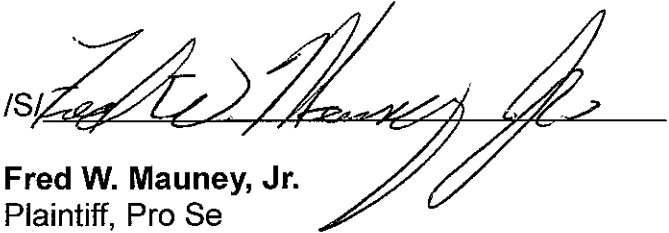
EXHIBITS

- Exhibit 1** – Court Docket Sheet which clearly shows plaintiff's assertions of misconduct.
- Exhibit 2** - Shows Kurt Lusty's second misconduct “Fraud upon the Court “ motions
- Exhibit 3** - Sample of U.S. Code -Title 5 – Government Ethics for employees and Attorneys
- Exhibit 4** - Special section of U.S. Code -Title 5 on “Ethics” and the Department of Justice employees and attorneys
- Exhibit 5** - Showing the U.S. Supreme Court and U.S. Attorney Generals' position on conduct /misconduct of government and Department of Justice attorneys which refers to the ABA's rules of conduct / conflict of interest. 1990
- Exhibit 6** - Example of the ABA's rules
- Exhibit 7** - Copy of the U.S. Dept. of Justice Ethics handbook. 2000
- Exhibit 8** - Moore's 'The Federal Law of Attorney Conduct'
- Exhibit 9** - Copy of *Berger v. United States*

Exhibit 10 - A – Magistrate Alba's order refusing to recognize Kurt Lusty as an assistant U.S. Attorney
B- Judge Kimball's order also refusing to acknowledge Kurt Lusty as an assistant U.S. Attorney

Exhibit 11 - The ABA's code of Official Conduct
– no impropriety in the courtroom
– not to allow even the appearance of any impropriety in the courtroom.

Exhibit 12 - Copy of Marbury v. Madison

IS/  _____
Fred W. Mauney, Jr.
Plaintiff, Pro Se

CERTIFICATE OF SERVICE

It is hereby certified that on April 21, 2010 a **MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT** was sent by priority mail to the following:

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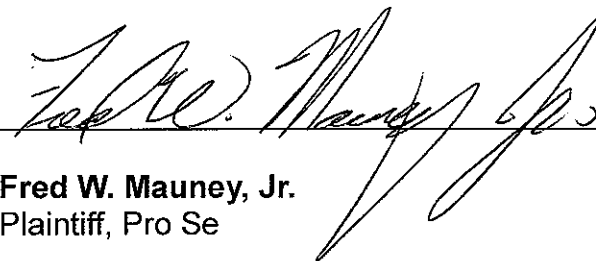
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Dale A. Kimball
U.S. District Court Judge
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ISI 
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Plaintiff, Pro Se