

IN THE SUPREME COURT OF OHIO

A.J. BORKOWSKI, JR., : On Appeal from the Lucas County
 : Court of Appeals, Sixth Appellate
 Plaintiff / Appellee, : District
-vs- : Supreme Court Case No. 2006-1913
 : Court of Appeals Case No. L-05-1425
 CHARLES D. ABOOD (JUDGE), : Trial Court Case No. CI0200504894
 : (Lucas County)
 Defendant / Appellant. :

**APPELLEE A.J. BORKOWSKI, JR. MEMORANDUM
IN OPPOSITION TO JURISDICTION**

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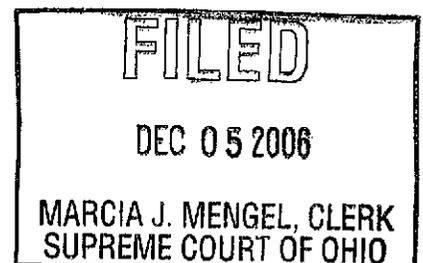


TABLE OF CONTENTS

	Page
I. EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST	- 1 -
II. STATEMENT OF THE CASE AND FACTS	- 4 -
III. ARGUMENT	- 9 -
Proposition of Law No. 1: Judges/justices who act in the clear absence of all jurisdiction are liable to respond in monetary damages at common law or by statute for any wrongdoing or breach of law.	- 9 -
IV. CONCLUSION	- 13 -
CERTIFICATE OF SERVICE	- 14 -
APPENDIX	Appx. Page
Not allowed pursuant to S. Ct. Prac. R. III, Section 2(B)	

I. EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

The Appellant Judge Charles D. Abood has set forth no valid reason why this case is a case of Public or Great General Interest. A constitutional argument was not raised. Jurisdiction should not be accepted as it would serve only to reward the Appellant Judge's negligence, act in bad faith, and act in the clear absence of all jurisdiction.

In this case, the Appellant Judge Abood knew he lacked all jurisdiction to proceed and continued to preside over a Civil case or the Civil cases during the 12 day window contrary to the statute under 28 U.S.C. §1446(d). The Court of Appeals properly decided the issue of the doctrine of absolute judicial immunity, finding that Appellant Judge Abood lost his absolute judicial immunity (just like any other judge would) when he continued to preside over a case during the 12 day window contrary to valid case law and the statute (28 U.S.C. §1446(d)).

The exception at issue here permits litigants to sue a judge for a judicial act if and only if he performs the judicial act in the "complete absence of all jurisdiction" as Judge Abood did in this action. Binding case law says that a judge loses absolute judicial immunity for engaging in a judicial act in the complete absence of all jurisdiction or when he lacks subject matter, personal, or territorial jurisdiction over a case. This is why the decision below must be allowed to stand, and this case is not of public concern. Indeed, the public are not interested in hearing about bad judges, who act in bad faith and in the complete absence of all jurisdiction in the face of clearly valid statutes or case laws expressly depriving him or it of jurisdiction. What is of public interest is that a judge has acted impartially and has upheld the laws, the constitutions of both Ohio and the United States, as their Office of Oath incumbents them to do. The law is clear a judge loses his

judicial immunity for engaging in a judicial act that he lacks complete jurisdiction or when a judge act in the “complete absence of all jurisdiction.” The Court of Appeals Decision must stand. This Court must decline jurisdiction to hear this case so that the integrity and independence of the judiciary will be preserved and save the tax payers resources or this court’s machinery for more important cases to follow.

By Appellant’s own written words in his memorandum in support of jurisdiction he contradicts himself or misleads this Court by saying “By extension, judges who exercise jurisdiction during a stay or after a notice of appeal has been filed will also face trial and judgment for these errors.” This case which is a removal from the States Court to a federal court is distinguished from a stay of proceedings or a notice of appeal because removals are removed from state to federal court and stays or appeals are generally from state to state court or federal to federal court. Perhaps the Appellant is threatening to sue the trial court if he proceeds in the underlying case while this notice of appeal is pending before this Court, since his request for stay of the Court of Appeals proceedings were denied by this Court on October 20, 2006.

In any event, the law is clear judges are not immune when they act in the complete absence of all jurisdiction over a case. For example, when a judge knows and acts in the complete absence of all jurisdiction (which lacks immunity protection) whether it is for 10 minutes or 12 days, he loses his absolute judicial immunity for presiding over a case “unless and until the case is remanded,” he will also face trial and judgment and any other appropriate relief for engaging in these acts. 28 U.S.C. §1446(d). Consequently, the Court of Appeals’ ruling must be upheld because its May 6, 2005 ruling is now *res judicata*.

Appellant judge is absolutely correct the removal statute does not use the word “divest.” However, it does use the words “the State Court shall proceed no further unless and until the case is remanded.” 28 U.S.C. §1446(d). Moreover, Appellee complied with the removal statute after filing such notice of removal in the U.S. District Court gave a required written notice to all adverse parties and filed a copy of that written notice with the Clerk and notified Appellant of such written notice (which was filed on May 12, 2004) at a hearing held before him on May 13, 2004. To the extent, the Appellant’s posture was to threaten this Appellee by throwing him in jail for thirty days, if he repeated that he lacked jurisdiction to proceed in the underlying case one more time. The removal case was remanded to the State Court on May 24, 2004. Judge Abood did not have proper subject matter, personal and territorial jurisdiction over the underlying case nor did the Fulton County Court of Common Pleas. As a result, he lost his absolute judicial immunity when he was informed by Appellee that he lacked complete jurisdiction and he continued to preside over a case during the 12 day window contrary to the statute under 28 U.S.C. §1446(d).

The Court of Appeals Decision must stand. This Court must decline jurisdiction to hear this case so that the integrity and independence of the judiciary will be preserved and save the tax payers resources or this court’s machinery for more important cases to follow.

Absolutely no valid grounds were given as to why this is a case of Public or Great General Interest. No constitutional issue was raised. Jurisdiction should be denied.

II. STATEMENT OF THE CASE AND FACTS

The Underlying Matter:s: Borkowski v. Borkowski; Humberts, et al. v. Borkowski, et al.; Borkowski v. Shaffer, et al.; U.S. Bank v. Borkowski, et al.,

The Honorable Judge Charles D. Abood, formerly of the Sixth District Court of Appeals, was assigned as a Visiting Judge by Chief Justice Thomas J. Moyer of the Ohio Supreme Court on April 13, 2004 over the matters of *Borkowski v. Borkowski* case no 04CV018 on April 30, 2004 over the matter of *Borkowski v. Shaffer, et al.* case no. 04CV091 then on February 14, 2005 Judge Charles D. Abood was assigned to hear all cases involving Appellee A.J. Borkowski filed in the Fulton County Court of Common Pleas, General and Domestic Relations Divisions. The Appellant's blanket case assignment which included *Humbert, et al, v. Borkowski, et al.* case no 01CV0274 is discussed below.

Appellant Judge Abood acted in and committed bad faith in dealing with the Appellee A.J. Borkowski, Jr. Appellant acted willfully, fraudulently, intentionally, and in bad faith by acting in a clear absence of all jurisdiction. As correctly determined by the Court of Appeals Appellant was not entitled to absolute judicial immunity from Appellee's claims for monetary damages. Judges/justices who act in the clear absence of all jurisdiction are liable to respond in monetary damages at common law or by statute for any wrongdoing or breach of law. *Wilson v. Nue* (1984), 12 Ohio St. 2d 102, 103, 465 N.E. 2d 854.

The *Humbert, et al, v. Borkowski, et al.* case no 01CV0274 case was originally assigned to Judge Robert C. Pollex of Wood County as a Visiting Judge by Chief Justice Thomas J. Moyer on February 4, 2002 effective January 10, 2002 due to the fact Administrative Judge James E. Barber cannot preside over any of Borkowski's or his

family members cases due to a fact Judge Barber not only sent in a character letter but he was also a character witness for his best friend in attorney John S. Shaffer's Disciplinary proceedings cite as *Disciplinary Counsel v. Shaffer* 98 Ohio St. 3d. 342, 2003-Ohio-1008. all of the above cases stem from attorney Sheffer's fraudulent misconduct.

On August 10, 2006 during a hearing held in Lucas County Court of Common Pleas in case cite as *Borkowski v. Judge Abood* no. CI-0200504894 not only did Judge Michael P. Kelbley but also Judge Abood's own counsel agreed it was all fraud on attorney Sheffer's part relating the Power of Attorney and real estate.

On February 14, 2005 Judge Robert C. Pollex recused from the *Humbert, et al, v. Borkowski, et al.* case no 01CV0274. Fact is on or before December 3, 2004 Judge Robert C. Pollex received a telephone call from the *office of disciplinary counsel* of the Supreme Court of Ohio "Jonathan E. Coughlan, disciplinary counsel.

On December 3, 2004 at or about 11:30 am Appellee A.J. Borkowski, Jr. received a telephone call from Jonathan E. Coughlan, who informed Mr. Borkowski, Jr. that he instructed Judge Pollex to change the entire reinstated Order and Judgment Entry of March 15, 2004 as attorney Shaffer was to pay all of Borkowsk's costs and refund the Humbert's and Ebersole and settle up with U.S. Bank relating Defendant Jennifer M. Borkowski mortgage for his real estate fraud in this matter. Jonathan E. Coughlan also informed A.J. Borkowski through the same telephone conference that Judge Pollex was going to make a some change to the March 15, 2004 Order and the Judgment Entry right away such complete change would take 6 to 9 months because Judge Pollex had to vacate the orders and judgment entry's and restore title in A.J. Borkowski, Jr's name as this would take some time and if by chance Judge Pollex did not want to order Shaffer to

refund the above named buyers as he would be recusing him self and would ask for another Judge to be assigned as a result of Judge Pollex recusal on February 14, 2005.

On February 14, 2005 Judge Charles D. Abood agreed and took over all cases as his certificate of assignment included Judge Pollex's case Humbert, et al, v. Borkowski, et al, the quiet title action that attorney Shaffer created with his fraudulent and his commission with intent to commit fraud. Appellant Judge Charles D. Abood failed to comply with the ordering Shaffer to refund and restore title to above real estate instead Judge Abood called the *Disciplinary Counsel v. Shaffer* Proceedings and Orders hogwash as he disbelieved it and he interjected that he is the Judge and he was going to do what he wanted to do relating all of these matters and Judge Abood stated same in open Court for all parties to hear.

The Appellant Judge Abood has acted in bad faith in *Humbert, et al, v. Borkowski, et al.* case no 01CV0274 due to the fact Judge Abood denied Appellee Borkowski, Jr. clear legal right to collect costs of his cases from attorney Shaffer he refused to order title restored in Appellee Borkowski, Jr.'s name as incumbent by his Grandmother's valid Last Will and Testament. Judge Abood refused to order attorney Shaffer to refund the Humbert's and Ebersole and settle up with U.S. Bank relating Defendant Jennifer M. Borkowski mortgage for his real estate fraudulent conveyance with intent to fraud as agreed and ordered by the *disciplinary counsel* this clearly shows Judge Abood has acted in bad faith and or agreed to cover up for attorney Shaffer fraudulent misconduct and further shows bad faith contrary to existing case law of this state besides being disrespectful to not only the Disciplinary Counsel recommendations but also to the Court The Supreme Court of Ohio findings relating to *Disciplinary*

Counsel v. Shaffer as well. This Court has the authority to punish Appellant Judge Abood for his judicial misconduct as a matter of law.

The Appellee asserts that through the telephone conference with Jonathan E. Coughlan, disciplinary counsel of this court, this Court now knows for a fact that attorney John S. Shaffer transferred the real estate by fraud with intent to fraud and thus, is liable to Appellee for costs and to the buyers for the fraudulent conveyance of the real estate in question as well as all of the above said cases stem from his misconduct.

In the matter of *Borkowski v. Borkowski* case 04CV018 this is a case relating eviction filed against the Appellee A.J. Borkowski, Jr. on 1/26/04 when the Plaintiff did not have title to said real estate, the fact of the matter is the Appellee at the time of eviction proceedings he was the legal title holder by the last will and testament of Bertha Borkowski/Stewart and no one pays rent on their own property by matter of law and as of this date the Plaintiff still does not have a legal title to said real estate due to attorney John S. Shaffer's fraud found by this court in that the Appellant Judge Abood made it clear in his court it is his Court and he does not and will not uphold this Courts or the Disciplinary Counsel's findings relating the real estate he will do what he wants, this means he is above the law and the Supreme Court of Ohio and Federal law. It is his Court and not fairness that count. *Borkowski v. Shaffer, et al* Fulton County case no 04CV091.

In the matter of *U.S. Bank v. Borkowski, et al.* Fulton County case no 03CV0330 this is a case in foreclosure action as there was no recorded mortgage in the Fulton County Records when U.S. Bank filed the said lawsuit and besides there was no title to pass because of Attorney Shaffer's unethical misconduct and Judge Pollex's acts of bad faith by validating a pure rubber stamped title for a valid one all in order to cover-up

Attorney Shaffer's fraud with intent to commit fraud in *Humbert, et al, v. Borkowski, et al.* case no 01CV0274 as Appellant Judge Abood did in the other proceedings under his control.

Likewise, Appellant Judge Abood has admitted his wrong and paid in the amount of \$128.50 for the costs of the Appeal as Ordered on September 22, 2006 by the Lucas County Court of Appeals, Sixth Appellate District.

Appellant Judge Abood has admitted his wrong and is liable to Appellee A.J. Borkowski, Jr. for monetary damages in connection with acting willfully, fraudulently, intentionally, and in bad faith by acting in a clear absence of all jurisdiction in the underlined assigned cases besides disallowing the Appellee to open and settle the estate of his Grandmothers that attorney Shaffer opened and closed in less than Sixty (60) days without the estate of Bertha Stewart/Borkowski being settled. Additionally, on October 20, 2006, this Court correctly denied the Appellant's motion for stay and on December 4, 2006, the Trial Court went above this Court's said order as it unambiguously lacked jurisdiction to consider or rule upon the Appellant's motion for stay filed in the trial court pending the disposition of this Court and prejudiced the Appellee by improperly granting the Appellant's said motion for stay pending the resolution by this Honorable Court. The law is clear the trial court loses jurisdiction to consider matters in an underlying case except to take action in aid of the appeal. S. Ct. Prac. R. II, Section 2(D). Clearly, the action that the trial court took on December 4, 2006 did not aid the instant appeal as relegated by S. Ct. Prac. R. II, Section 2(D) because the issue of the stay had already been decided by this Court.

Lastly, enough is enough this Court must preclude the Appellant from proceeding with this action and decline to hear the instant case as it is frivolous and thus, this Court must stop his prejudicial misconduct as any other "Honorable" Court would.

III. ARGUMENT IN SUPPORT OF WHY THIS CASE IS NOT OF PUBLIC INTEREST REGARDING THE APPELLANT'S PROPOSITION OF LAW RAISED IN HIS MEMORANDUM IN SUPPORT OF JURISDICTION

Proposition of Law No. 1: Judges/justices who act in the clear absence of all jurisdiction are liable to respond in monetary damages at common law or by statute for any wrongdoing or breach of law.

The Appellant's sole Argument in Support of Proposition of Law-inapplicable here-the exception at issue here permits litigants to sue a judge for a judicial act if he performs the judicial act in the "complete absence of all jurisdiction." *Wilson v. Nue* (1984), 12 Ohio St. 2d 102, 103, 465 N.E. 2d 854. When a civil removal action is properly perfected, the "State Court shall proceed no further unless and until the case is remanded. Citing 28 U.S.C. §1446(d).

The parties do not dispute that Judge Abood was presiding over Appellee's case(s) at all times relevant to these actions, and therefore, lost his absolute judicial immunity when he continued to preside over the eviction hearing and on May 21, 2004 instructed the Court Assignment Commissioner Sue Behnfeltdt to schedule a hearing in the foreclosure case or 03CV-330 and continued with hearing without U.S. Bank or parties present. The Court of Appeals decision in *Borkowski v. Borkowski*, 6th Dist. No. F-04-020, 2005-Ohio-2212, attached to Complaint as Exhibit 1, evaluated whether Judge Abood acted with adequate jurisdiction and therefore was part of it "for all purposes." Judge Abood absolute judicial immunity was lost when he continued to preside over the underlying case, which were in the "complete absence of all jurisdiction." Therefore, this

Court must affirm the Court of Appeals September 22, 2006 decision and remand the case to the trial court for further proceedings consistent with the Court of Appeals 09-22-2006 decision. See, *Borkowski v. Abood*, 6th Dist. No. L-05-1425-2006-Ohio-4913, ¶s17-23.

If this Court accepts review pursuant to Article IV, Section 2 of the Ohio Constitution, the Ohio Revised Code, or its own Rules it will examine the merits of the Appellee's complaint under Ohio Civil Rule Procedure 8(A). Under Ohio Civil Rule 8(A), the Court clearly affords a party the right to file a complaint setting forth a claim for relief in the form of a short and plain statement of the claim showing the grounds for the complaint that the party is entitled to relief and requesting a judgment for the relief which the party claims to be entitled. The Rule further provides that a complaint may set forth a claim for relief in the alternative or of several different types may be demanded.

On August 23, 2005, Appellee filed a complaint against Judge Abood, asserting that the judge violated his constitutional rights and the Ohio Revised Code and the Ohio Constitution when he continued to preside over Borkowski's case. (Complaint ¶5). Contemporaneously, he filed a "notice of lis pendens," claiming his entitlement to two pieces of real estate owned by Judge and Mrs. Abood. In these actions, Appellee set forth in the proper manner a claim(s) due to the Judge's negligence, acting in bad faith, and acting in the clear absence of all jurisdiction; demanded a judgment in the amount of \$1,000,000.00 for the relief which he claims to be entitled; requested several different types of relief which included an order prohibiting Judge and Mrs. Abood from disposing of their assets including two pieces of real estate owned by Judge and Mrs. Abood; and any other relief the Court deemed appropriate. (WHEREFORE, ¶ a-d). Appellee complied with Ohio Civil Rule 8(A). Thus, at the time Appellee filed his Complaint, the

Complaint stated a claim upon which relief could be granted as determined by the Court of Appeals.

Judge Abood filed a motion to dismiss, arguing that-even taking all of Appellee's allegations as true-the complaint failed to state a claim upon which relief could be granted because Judge Abood was absolutely immune. The law is clear, because it permits litigants to sue a judge for a judicial act in the "complete absence of all jurisdiction." See, *Rankin v. Howard* (C.A. 9, 1980), 633 F. 2d 844, 849; *Wilson v. Nue* (1984), 12 Ohio St. 2d 102, 103, 465 N.E. 2d 854. In both his Complaint and Reply memoranda in opposition to motion to dismiss, Appellee explained that the exception at issue here permits litigants to sue a judge for a judicial act in the "complete absence of all jurisdiction." *Id.* The trial court improperly dismissed the complaint with prejudice and denied the Notice of *Lis Pendens* on December 1, 2005. Appellee then appealed the trial court's decision to the Sixth District Court of Appeals. On September 22, 2006, the Court of Appeals agreed with Appellee, reversed and remanded, finding that Appellee's complaint did not fail to state a claim upon which relief could be granted, further finding that Appellant acted in the clear absence of jurisdiction-rather than in excess of jurisdiction, and therefore, lost judicial immunity in this case and further finding that the trial court made no determination to Appellee's allegations that Appellant acted with bad faith in the underlying case. Taking all of Appellee's averments as true, this Court must issue a substantive judgment for Appellee Borkowski because, as a matter of law, Appellant acted in "complete absence of all jurisdiction;" committed bad faith in dealing with the Appellee A.J. Borkowski, Jr., and determine that Appellant is liable for those damages in the amount of \$1,000,000.00. *O'Brien v. University Community Tenants*

Union, Inc. (1975), 42 Ohio St. 2d 242 (syllabus) citing *Conley v. Gibson* (1957), 355 U.S. 41.

Therefore, based on the Appellate Court's decision, clearly valid statutes or caselaw which expressly deprived the Appellant of jurisdiction, which such acts were in a clear absence of jurisdiction resulting in the lost of his judicial immunity, this Court or any other court of law of proper jurisdiction may now proceed forward and review the complaint on the merits and issue a substantive judgment in favor of the Appellee herein. It would therefore, be proper for this Court to enter judgment against Judge Abood at this time, as Appellee asks this Court to find that Appellant acted in the clear absence of all jurisdiction, rather than excess of his jurisdiction, and therefore, lost judicial immunity in this case and acted with bad faith in the underlying case. Consequently, an examination of the Appellant's Memoranda in Support of Jurisdiction and the record below discloses that discovery is unnecessary because the appeal is frivolous and that the dispositive issue or issues have been authoritatively decided as the facts and legal arguments are adequately presented in the underlying briefs and record, and the decisional process would not be significantly aided by discovery or a trial of this matter. Accordingly, this Court must find that substantial justice has been done the party complaining, and the Judgment of the Lucas County Court of Appeals is affirmed consistent with the opinion of the Court of Appeals and that Appellant is ordered pay the court costs of this appeal.

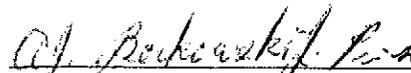
Moreover, the Court of Appeals properly determined that Judge Abood acted in the "complete absence of all jurisdiction." See, *Rankin v. Howard* (C.A. 9, 1980), 633 F. 2d 844, 849; *Wilson v. Nue* (1984), 12 Ohio St. 2d 102, 103, 465 N.E. 2d 854. Accordingly, Appellee's complaint, on its face, demonstrates a clear legal right to the relief he has demanded. *Truesdell v. Combs* 33 Ohio St. 186. In the *Truesdell v. Combs*

33 Ohio St. 186, the Supreme Court of Ohio correctly determined that the magistrate and the county officiants were civilly liable to the party bringing the action for acting in the clear absence of all jurisdiction in that action. Under the facts and circumstances of this case, the trial court prejudicially erred by denying Summary Judgment, Enforcement of law against the Appellant and Request for Sanctions for Appellee. The trial court judgment was unreasonable and arbitrary. It was an abuse of discretion. The dismissal was clearly erroneous, therefore, the dismissal must be reversed and remanded for execution of the Court of Appeals September 22, 2006 judgment.

IV. CONCLUSION

For the foregoing reasons, this case does not involve an important matter of public or great general interest, nor was a constitutional issue raised. Appellee A.J. Borkowski, Jr., therefore, respectfully requests that this Court decline to accept jurisdiction in this case because this important case has already been decided on the merits by the Court of Appeals' on May 6, 2005 and is now *res judicata*. In the alternative, Appellee asks this Court to find that substantial justice has been done the party complaining, and the Judgment of the Lucas County Court of Appeals is affirmed consistent with the opinion of the Court of Appeals and that Appellant is ordered pay the court costs of this appeal.

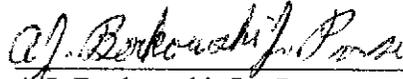
Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that on December 5, 2006 a copy of the Memorandum in Opposition to Jurisdiction was served, by via regular U.S. Mail, upon Kimberley Vanover Riley, Esq. (Counsel of Record), Linda L. Woeber, Esq., Gorge D. Jonson, Esq., Montgomery, Rennie & Jonson, 36 East Seventh Street, Suite 2100, Cincinnati, Ohio 45202 Counsel for Defendant / Appellant Charles D. Abood (Judge) and Fifth Third Bank, Madisonville Operation Center, Att. Manger Dept., 5550 Kingsley Drive, Cincinnati, Ohio 45263.



A.J. Borkowski, Jr., Pro-se
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