

IN THE SUPREME COURT OF OHIO

CHARLES D. ABOOD, JUDGE, : Case No. 2006-1913
Appellant, : On Appeal from the Lucas County
-vs- : Court of Appeals, Sixth Appellate
District
A.J. BORKOWSKI, JR., :
Appellee. :

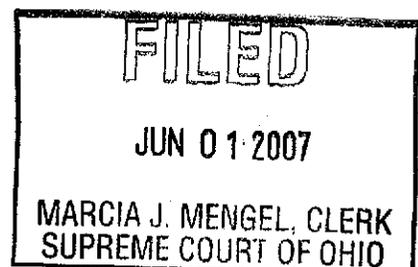
**APPELLEE A.J. BORKOWSKI, JR., MOTION TO DISMISS/STRIKE THE INSTANT
APPEAL FOR LACKING A SUBSTANTIAL QUESTION OR PUBLIC OR GREAT
GENERAL INTEREST; REQUEST FOR APPROPRIATE IMPOSITION OF
SANCTIONS PURSUANT S. CT. PRAC. R. 14, SEC. 4(A); AND NOTICE OF INTENT
TO FILE OR TAKE ALTERNATIVE ACTION IN THE SOUTHERN DISTRICT
COURT OF OHIO UNDER 42 U.S.C. §1983 AND OTHER APPLICABLE LEGAL
PROVISIONS AGAINST THE APPELLANT JUDGE ABOOD**

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Counsel for Defendant, Appellant-Respondent
the Honorable Judge Charles D. Abood



LAW AND ARGUMENT

S. Ct. Prac. R. XIV, Section 4(A) provides for an application for an order or other relief and that such filing must be made for the order or relief requested. Wherein such filing must state with particularity the grounds upon which that motion is based. Consequently, Appellee respectfully request this Honorable Court to grant his instant motion to dismiss/strike the foregoing appeal for lacking a substantial constitutional question or public or great general interest; request for appropriate imposition of sanctions, on the reasonable grounds outlined below:

Appellant Judge Abood lacked adequate and proper subject matter jurisdiction over the cases or controversy during the 12-day window in which Appellee's removal petition was pending. The added adjudicative facts mentioned by Appellant Judge Abood in his Reply Brief provides for not only a procedural history from other cases in which Judge Abood presided in which Appellee was involved but most importantly will change the conclusion that Judge Abood retained absolute judicial immunity over *Borkowski v. Borkowski, et al.*, including the two judgment entries, a writ of execution, a writ of possession, two official notices, and a return of service during the 12-day window in which Appellee's removal petition was pending.

The attachments and Appellee's reference to those attachments throughout Appellee's Statement of Facts in Appellee's Brief, Appendix are proper and must be included in the Court's analysis of the lower courts' respective determinations because in *Borkowski v. Borkowski, et al.*, Judge Abood continued ruling after Appellee filed a Petition for Removal, thereby acting in the clear absence of all jurisdiction and losing absolute immunity during the 12-day window in which Appellee's removal petition was pending; because this Court's

review is warranted by the Sixth District Court of Appeals' underlying decision in *Borkowski v. Borkowski*; and, also because the judicial immunity cases Judge Abood cites—except *Wilson v. Nue* (1984), 12 Ohio St. 3d 102, 103, 12 O.B.R. 147, 465 N.E. 2d 854—are inapplicable because the underlying judicial acts occurred in criminal cases as the Court's respective determinations were based upon civil matters which are distinct from the criminal matters cited by Judge Abood. Thus, Appellant submits that Judge Abood lacked adequate and proper subject matter jurisdiction over the cases or controversy during the 12-day window in which Appellee's removal petition was pending. And that Judge Abood was not absolutely immuned during the 12-day window in which Appellee's removal petition was pending, and thereby he acted in the clear absence of all jurisdiction by continuing ruling after Appellee filed his Petition for Removal.

Moreover, here Appellant Judge Abood unambiguously lacked subject matter jurisdiction over the cases or controversy during the 12-day window in which Appellee's removal petition was pending and could not exercise jurisdiction over the cases when he had disqualified himself from hearing the cases and the Appellee had previously filed a affidavit of disqualification in this Court which¹ related to whether he or his court had subject matter jurisdiction over *Borkowski v. Borkowski* case at Bar. Consequently, for all of the foregoing reasons, *res judicata* is therefore warranted under these circumstances in this case, and thus this Court is precluded from considering the issue in this matter. Accordingly, because the Sixth District Court of Appeals' has determined that Appellant Judge Abood acted in the clear

¹ Pursuant to Fed. R. 10(C), the Federal Court and appellate courts below properly considered the Complaint-Removal Petition and attachments in deciding the merits of Appellee's petition which included many of the documents contained in Appellee's Brief, Appendix filed herein on May 7, 2007. Nevertheless, Appellee Brief, Appendix includes ample adjudicative facts from that Removal Petition and attachments which were properly before Judge Abood prior to his ruling and made a part thereof, that will permit this Court to take judicial notice over the adjudicated facts in the underlying cases pursuant to Evid. R. 201 (A) through (f).

absence of all jurisdiction and lost absolute immunity during the 12-day window in which Appellee's removal petition was pending and because Judge Abood was precluded from claiming immunity because the issue had already been decided by the Sixth District Court of Appeals, thereby triggering *res judicata*. As a result, and as a matter of law Appellant Judge Abood rulings are void as opposed to being voidable in this matter and thus, the Sixth District Court of Appeals' decision must be affirmed.

For all of the foregoing reasons, the Appellee could conceivably sue Appellant Judge Abood in the Southern District Court of Ohio under 42 U.S.C. §1983. therefore, Appellee could conceivably argue in the Southern District Court of Ohio that the Court of Appeals opinion showed that Appellant Judge Abood acted in the complete absence of all jurisdiction and that his judicial immunity was lost, and further that this Court is precluded from considering the issue in this matter. Furthermore, that the Court of Appeals' opinion should be given preclusive effect in the civil cases against Appellant Judge Abood for the preceding compelling reasons. Accordingly, the Appellee believes that the Southern District Court of Ohio would properly conclude that *res judicata* is the proper vehicle and is applicable in this action for all of the compelling preceding reasons. Accordingly, the Appellee further believes that the Southern District Court of Ohio would also properly conclude that Appellant Judge Abood lacked subject matter jurisdiction over the controversy and that his judicial immunity was lost to issue a ruling during the 12-day window which is sufficient to entitle Appellee to the requested monetary damages to which the trial and appellate courts below properly considered in the Appellee's Complaint and its attachments in deciding the merits of Judge Abood's Motion to Dismiss.

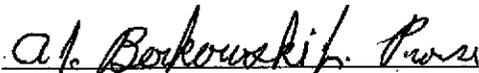
Additionally, Appellee suggests that the judges in the underlying cases engaged in conflict of interest, and thereby asks that this Court take appropriate action against those judges to include both criminal and civil sanctions for their judicial misconduct. Consequently, the Appellee asks this Court to take a discretionary/mandatory judicial notice over the adjudicative facts made in his brief, and Appendix in resolving the issues which include misconduct or conflict of interest. Thus, based upon the preceding reasonable grounds the Appellee asks that this Court grant his instant motion to dismiss/strike the foregoing appeal for lacking a substantial constitutional question or public or great general interest; and request for appropriate imposition of sanctions. Consequently, because this Motion states with particularity the grounds upon which this motion is based, the Appellee is legally entitled to the requested relief made herein.

WHEREFORE, for all of the foregoing reasons, Appellee A.J. Borkowski, Jr., respectfully requests that this Court affirm the decision of the Sixth District Court of Appeals and to enter judgment for Appellee for the preceding reasons. Appellee further request this Court dismiss/strike this appeal for lacking a substantial constitutional question or public or great general interest in its entirety; to order the complete records in Fulton County Court of Common Please Cases 01CV000274, 03CV000330, 04CV0000018, 04CV000091, and 07MISC00006 to determine whether the judges assigned to those cases have failed to perform any of their duties, or engaged in conflict of interests, to conduct a hearing in which Fremont Investment and Loan and U.S. Bank must show cause why they should not be cited for criminal contempt, frivolous conduct, disciplinary action.

In the alternative, Appellee A.J. Borkowski, Jr., suggests that he will sue Appellant Judge Abood in the Southern District Court of Ohio under 42 U.S.C. §1983 and other

applicable legal provisions, and will identify what action he wants that Court to take in response on the preceding reasons which is sufficient to entitle Appellee to the requested monetary damages to which the trial and appellate courts below properly considered in the Appellee's Complaint and its attachments in deciding the merits of Judge Abood's motion to dismiss as well as all other relief this Court shall deem proper and just. (Emphasis added).

Respectfully submitted,


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CERTIFICATE OF SERVICE

This is to certify that on May 31st, 2007 a true copy of this Motion to Dismiss/Strike, etc. was served, by via U.S. Mail, upon George D. Jonson, Esq., Linda L. Woeber, Esq., Kimberly Vanover Riley, Esq., (Counsel of Record), MONTGOMERY, RENNIE & JONSON, 36 East Seventh Street, Suite 2100, Cincinnati, Ohio 45202, Counsel for Appellant-Respondent the Honorable Judge Charles D. Abood.


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