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

**RICHARD W. LEWIS, PhD.,**

Plaintiff/Courter Defendant/  
Appellee,

**9<sup>th</sup> Cir. Case No. 13-16181**

vs.

D.C. Case No.  
**3:99-cv-00386-LRH-WGC**

**TYRONE DUFF and LINDA DUFF,**

Defendants/Counter Claimants/  
Appellants,

**R E C E I V E D**  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

and

**SEP 17 2013**

ELIZABETH RICHITT, PhD.; RICHARD  
WEIHER, PhD., DAVID ANTONUCCIO, PhD.  
LOUIS MORTILLARO, PhD., DENNIS ORTWEIN,  
CHRISTA PETERSON, PhD., STATE OF NEVADA,  
BOARD OF PSYCHOLOGICAL EXAMINERS,

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

Defendants. /

**APPELLANTS' INFORMAL OPENING BRIEF**

**1. Jurisdiction**

a. Timeliness of Appeal:

**(i) Date of entry of judgment or order of district court:**

Doc. # 424 filed May 10, 2013 – Order – Excerpts of Record  
(hereinafter 'ERT') **ERT 727**

Doc. #425 entered May 10, 2013 – Judgment – **ERT 729**

**(ii) Date of service of any motion made after judgment:**

None

**(iii) Date of entry of order deciding motion:**

Doc. # 417 filed May 3, 2011 – Minutes of Proceedings –  
Hearing re Monetary Sanctions and Pre Filing  
Review Order – **ERT 720**

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2 Doc. #424 filed May 10, 2013 – Order – **ERT 727**

3 Doc. #426 filed May 10, 2013 – Minute Order – **ERT 730**

4 **(iv) Date of notice of appeal or petition filed:**

5 Doc. # 429 filed/entered June 10, 2013 – Notice of Appeal –  
6 **ERT 734**

7 **(v) For prisoners, date you gave notice of appeal to prison  
8 authorities: N.A.**

9 **b. IF POSSIBLE, PLEASE ATTACH ONE COPY OF EACH  
10 OF THE FOLLOWING:**

- 11 1. The order from which you are appealing;
- 12 2. The district court’s entry of judgment;
- 13 3. The district court docket sheet.

14 **2. What are the facts of your case?**

15 **INTRODUCTION**

16 The Plaintiff Richard W. Lewis, Ph.D.’s initial complaint for redress  
 17 under 42 USC §1983, filed July 16, 1999, was stricken, in its entirety, in the  
 18 order (#43). Plaintiff filed an Amended Complaint, but in and about  
 19 February 2000, Plaintiff asked Defendants to forbear responding because it  
 20 appeared, based upon recent decisions that his claims were barred by  
 21 absolute immunity. Finally, in October 2000, after the Court’s involvement,  
 22 Plaintiff was permitted to file a Second Amended Complaint (complaint)  
 23 (#74), in which he deleted the Board of Psychological Examiners (Board)  
 24 and all members of the Board except for Christa Peterson, PhD. and  
 25 Richard Weiher, PhD. (State Defendants) from his §1983 complaint and  
 26 asserted only one (1) claim, §1983 conspiracy. ERT 1, 10

27 The district court continues to act in the face of its jurisdictional  
 28 defect and assert it has federal jurisdiction under 28 USC §1331, in the  
 Plaintiff’s action for redress under 42 USC §1983 without a “state action”

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2 remaining before it for twelve (12) years after it dismissed Defendant State  
3 of Nevada with prejudice in the Order (#139)(**ERT 49**), which indisputably  
4 dismissed his cause of action under color of state law of his “one (1) claim  
5 of §1983 conspiracy” that simultaneously terminated his action for redress  
6 under 42 USC §1983 and the district court’s federal jurisdiction under 28  
7 USC §1331 July 12, 2001. Further, the district court continues to acted as  
8 the advocate for the Plaintiff, five (5) years, after he quit participate in any  
9 proceedings August 22, 2008 and for the State Defendants, eleven (11)  
10 years, after they quit participating in any proceedings August 16, 2002.

11 **A. Background Facts of the Case**

12 Plaintiff’s §1983 complaint arose under special statutory law  
13 independent of common law enacted by Congress governing an action for  
14 redress under 42 USC §1983, which provides civil action for the  
15 deprivation of civil rights “under color of state law” that pursuant to NRS  
16 41.0337 – State or Political subdivision to be named party defendant:

17 No tort action arising out of an act or omission within the  
18 scope of a person’s public duties or employment may be  
brought against any present or former:

- 19 1. Officer or employee of the State or of any political  
20 subdivision;
- 21 2. Immune contractor; or
- 22 3. State Legislator,

23 unless the State or appropriate political subdivision is named  
a party defendant **under NRS 41.031**.

24 **NRS 41.031** – Wavier of Sovereign Immunity

25 (2) An action may be brought under this section against  
26 the State of Nevada or any political subdivision of the  
27 State. **In any action against the State of Nevada, the  
28 action must be brought in the name of the State of  
Nevada in relation of the particular department, commis-  
sion, board, or other agency of the State whose actions  
are the basis for the suit. Emphasis added.**

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2 **1. The State Defendants Defense**

3 The Nevada Attorney General's Office (AG), on May1, 2001, filed  
4 its Motion (#111)(**ERT 20**) to Dismiss Defendant State of Nevada with  
5 prejudice from the Plaintiff's action for redress under 42 USC §1983, where  
6 the State of Nevada has sovereign immunity under *Eleventh Amendment*,  
7 which it conditionally waives in order to permit suit against it provided the  
8 "action [is] brought . . . against the State of Nevada . . . on relation of the  
9 particular department, commission, board or other agency . . whose actions  
10 are the basis for the suit. NRS 41.031(2). Plaintiff did not comply with  
11 NRS 41.031(2). Plaintiff's action must be dismissed because the State of  
12 Nevada has not waived its sovereign immunity as to actions brought against  
13 it in this case. . Based on the foregoing, Defendants motion must be granted  
14 and Plaintiff's Second Amended Complaint should be dismissed as to  
15 Defendant State of Nevada."

16 On June 8, 2001, Plaintiff filed a Response (#122)(**ERT 37, 45**) to  
17 the AG's Motion (#111) that stated "Defendants motion only applies to the  
18 State of Nevada not the other individual defendants. Accordingly, dismissal  
19 only against the State of Nevada is proper."

20 The AG's Reply (#123)(**ERT 47**), filed June 13, 2001, stated  
21 "Plaintiff agrees the complaint should be dismissed as to the State of  
22 Nevada. Accordingly, Defendant State of Nevada requests its motion be  
23 granted, and that this court enter an order dismissing the State of Nevada,  
24 with prejudice." The district court, on July 12, 2001, filed its Order (#139)  
25 (**ERT 49**) dismissing Defendant State of Nevada with prejudice that held:

26 "On May 1, 2001, defendant the State of Nevada filed a  
27 motion to dismiss (#111) on the basis that the State is not  
28 a person for purpose of 42 USC §1983. Eleventh Amend-  
ment immunity bars the suit against the State, and the State  
did not waive its sovereign immunity as to Richard W. Lewis'

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2 (“plaintiff”) claim. On June 8, 2001. Plaintiff filed a response  
3 indicating his agreement that the State is not a person for pur-  
4 poses of section 1983. On June 13, 2001, the State of Nevada  
5 filed a reply, indicating that based on that agreement, it should  
6 be dismissed, with prejudice. It is therefore hereby ordered  
7 that the motion to dismiss (#111) is granted. The State of  
8 Nevada is dismissed, with prejudice, from this action.”

9 AG’s Motion (#111) was fraudulent misrepresentation of Nevada  
10 Statutory law with willful intent to deceive or defraud the court to obtain an  
11 object not intended by law that pursuant to NRS 41.0337, no tort action  
12 arising out of an act or omission within the scope of a person’s public duties  
13 or employment may be brought against any present or former officer or  
14 employee of the State unless the State of Nevada is named a party  
15 defendant under NRS 41.031(2) that specifically states “an action may be  
16 brought under this section against the State of Nevada or any political  
17 subdivision of the State. In any action against the State of Nevada, the  
18 action must be brought in the name of the State of Nevada, in relation of the  
19 particular department, commission, board or other agency of the state  
20 whose actions are the basis for the suit.”

21 Statutory law enacted by Congress governing an action for redress  
22 under 42 USC §1983, barred the district court from exercising any  
23 authority, whatsoever, without a cognizable cause of action under “color of  
24 state law”, which is the main ingredient in activating federal jurisdiction  
25 under 28 USC §1331 in an action for redress under 42 USC §1983 that  
26 ceased to exist without a “state action” remaining before it after the Order  
27 (#139) dismissed Defendant State of Nevada with prejudice, that terminated  
28 the Plaintiff’s complaint for redress under 42 USC §1983 and its federal  
jurisdiction under 28 USC §1331 July 12, 2001, therefore it was bound by  
the Constitution and the rule of law to enter judgment on its Order (#139).

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2 **2. The Duff Defendants Defense**

3 Plaintiff's §1983 action is now ongoing fourteen (14) years, in which  
4 the district court has denied and continues to deny every pleading filed by  
5 the Duff Defendants, including five (5) Motions to Dismiss in its Orders  
6 (#75, #142, #231, #286, #307) in favor of the Plaintiff, which three (3)  
7 motions (#224, #279, #297) were based on its lack of federal jurisdiction  
8 under 28 USC §1331 without a "state action" remaining before it after the  
9 Order (#139) terminated the Plaintiff's complaint for redress under 42 USC  
10 §1983 July 12, 2001.

11 The district court's Order (#277)(see **ERT 136**), filed February 27,  
12 2003, held, "Tyrone and Linda Duff who are the only remaining defendants  
13 in this case", which was evident without a "state action" remaining before it  
14 after the Order (#139) dismissed Defendant State of Nevada, with  
15 prejudice, the Plaintiff no longer had a §1983 action before the district  
16 court; and therefore any authority exercised by the district court under 28  
17 USC §1331 against the Duff Defendants after the Order (#139), filed July  
18 12, 2001 was an usurped authority and for the exercise of such authority  
19 when the want of jurisdiction was known to the judge, no excuse was  
20 permissible, rendering its orders and judgments absolutely void in the  
21 fullest sense of the term for want of jurisdiction.

22 Had the district court not continue to act in the face of its  
23 jurisdictional defect after the Order (#139), the following twelve (12) years  
24 of malicious abuse of the legal process by the Plaintiff's dilatory conduct  
25 and feckless approach to the action as a vexatious litigant would not have  
26 occurred that caused the district court to willfully abuse its discretion for  
27 the issuance of, including but not limited to, its Order (#277) holding  
28 "Tyrone and Linda Duff who are the only remaining defendants" in his

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2 §1983 action after the Order (#142) held “Plaintiff’s complaint alleges that  
3 the actions of the Duffs are intertwined with the actions of the state actors”,  
4 which is the only part of Plaintiff’s complaint that connects the Duff  
5 Defendants in his §1983 action, which cannot be invoked by purely private  
6 conduct alone that was addressed in three prior appeals, in case nos. 02-  
7 16612; 04-15326; 08-17314.

8 The district court can only vindicated its authority by acknowledging  
9 its jurisdictional defect, where it continue to act against Duff Defendants for  
10 twelve (12) years without a “state action” remaining before it after the  
11 Order (#139) dismissed Defendant State of Nevada with prejudice that  
12 simultaneously terminated Plaintiff’s complaint for redress under 42 USC  
13 §1983 and its federal jurisdiction under 28 USC §1331 July 12, 2001.

14 **B. Facts Of The Case**

15 Four (4) days after the Order (#139) dismissed Defendant State of  
16 Nevada, with prejudice, which simultaneously terminated the Plaintiff’s  
17 complaint for redress under 42 USC §1983 and district court’s federal  
18 jurisdiction under 28 USC §1331 July 12, 2001, the district court ignored its  
19 jurisdictional defect with the filing of its Order (#142)(ERT 50) July 16,  
20 2001, denying Duff Defendants second Motion (#116)(ERT 26) to Dismiss,  
21 filed May 17, 2001, holding:

22 “Plaintiff alleges that the Duffs acted in a conspiracy with  
23 members of the Nevada State Board of Psychological Ex-  
24 aminers to deprive him of his property interest in practicing  
25 psychology. . . The Duffs are correct in their assertion that a  
26 claim for section 1983 requires some kind of state action.  
27 Plaintiff’s complaint alleges that the actions of the Duffs  
28 was intertwined with the actions of state actors.”

29 Just one (1) day after the Order (#139) granted the AG’s Motion  
30 (#111) dismissing Defendant State of Nevada with prejudice July 12, 2001,  
31 the district court filed its Order (#144)(ERT 53), July 13, 2001 denying the

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2 AG's Motion (#78)(**ERT 14**), filed December 11, 2000, for an Order to  
3 Show Cause and evidentiary hearing to determine why Plaintiff's complaint  
4 should not be dismissed for lack of subject matter jurisdiction pursuant to  
5 Fed.R.Civ.P. 12(b)(1) as they were unable to determine from his pleadings  
6 how the court had subject matter jurisdiction over his claim.

7 On March 28, 2002, Duff Defendants filed their third Motion (#224)  
8 (**ERT 55**) to Dismiss, arguing it was legally impossible for the district court  
9 to assert it had federal jurisdiction under 28 USC §1331, which failed to  
10 exits without a "state action" remaining before it after the Order (#139)  
11 dismissed Defendant State of Nevada, with prejudice, that terminated his  
12 complaint for redress under 42 USC §1983 July 12, 2001, which the district  
13 court denied in the Order (#231)(**ERT 86**), filed July 5, 2002, holding:

14 "This court has jurisdiction for cases that arise under federal  
15 law. A claim under 42 USC §1983 arises under federal law.  
16 Plaintiff sued the Duff's under section 1983 in this action  
17 because he alleged that they were part of the conspiracy to  
deprive him of his constitutional rights under section 1983.  
This court undisputably has jurisdiction over this claim."

18 On September 20, 2001, the AG filed its Motion (#177) for Summary  
19 Judgment dismissing all the remaining State Defendants, with prejudice,  
20 after the Order (#139) granted its' Motion (#111) dismissing Defendant  
21 State of Nevada with prejudice, which simultaneously terminated the  
22 Plaintiff's complaint for redress under 42 USC §1983 and the district  
23 court's federal jurisdiction under 28 USC §1331 July 12, 2001.

24 The district court's Order (#232)(**ERT 88**), filed July 5, 2002,  
25 granted AG's Motion (#177) for Summary Judgment holding the State  
26 Defendants are the prevailing parties in this §1983 action because the  
27 Plaintiff's complaint was frivolous, unreasonable and without foundation  
28 and totally lacked merit since he lacked any admissible evidence of a



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2 conspiracy and failed to allege a deprivation of a constitutional right and  
3 therefore he could not maintain a §1983 claim. The district court ordered  
4 the clerk to enter judgment (#233)(**ERT 97**), July 8, 2002, on the Order  
5 (#232).

6 The AG filed its Bill of Costs (#235)(**ERT 98**) against the Plaintiff,  
7 on July 16, 2002, “for defending a frivolous action” in the amount of  
8 \$2359.55. The AG, on July 22, 2002, filed its Motion (#237)(**ERT 106**) for  
9 Attorney Fees as the prevailing parties in Plaintiff’s §1983 action. This  
10 clearly established, the AG’s corrupt misconduct, when just prior to its’  
11 Motion (#177), the Order (#142) held, “Plaintiff’s complaint alleges that the  
12 actions of the Duffs are intertwined with the actions of the state actors” and  
13 after its motion (#177), the Order (#277) held “Tyrone and Linda Duff who  
14 are the only remaining defendants in the case.”

15 Plaintiff appealed (#241) to the Ninth Circuit in case no. 02-16558 on  
16 August 5, 2002 and the Duff Defendants filed cross appeal (#244) in case  
17 no. 02-16612 on August 7, 2002.

18 The district court, over fourteen (14) months after filing its Order  
19 (#139) that simultaneously terminated the Plaintiff’s §1983 action and its  
20 federal jurisdiction under 28 USC §1331 July 12, 2001, filed its Willingness  
21 to Reconsider (#267)(**ERT 114**), September 23, 2002, holding:

22 “Upon review of the files in this case, it appears that our order  
23 (#232) is incorrect insofar as it ordered that judgment be entered  
24 as to all remaining defendants except for the defendants, the  
25 Duffs. It appears that the action has not been terminated as to  
26 the defendants, the Duffs. Therefore, our order (#232) should  
27 be amended to delete the order to the Clerk to enter judgment.  
28 Our order (#232) is otherwise correct. The judgment should be  
vacated. A copy of this order shall be transmitted by the Clerk  
of the Court of Appeals in connection with the pending appeal.”

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2 The Ninth Circuit dismissed both appeals on October 16, 2002 (**ERT**  
3 **115, 116**) holding “it lacked jurisdiction over these appeals because the  
4 order challenged in the appeals is not final or appealable”, which violated  
5 the Duff Defendants’ constitutional rights to force them back before the  
6 district court for further proceedings against them after the Order (#139)  
7 terminated the Plaintiff’s complaint for redress under 42 USC §1983 and  
8 its federal jurisdiction under 28 USC §1331 July 12, 2001.

9 The Ninth Circuit was bound by the Constitution and the rule of law  
10 to set aside the two appeals as moot and note the district court’s  
11 jurisdictional defect and vacate the Plaintiff’s §1983 action, in its entirety,  
12 for lack of jurisdiction.

13 January 8, 2003, the district court filed its Order (#273)(**ERT 118**)  
14 holding, “the Defendants Duff are the only remaining defendants in the  
15 case”, which was legally impossible when the Order (#142) held, “the Duffs  
16 are correct in their assertion that a claim for section 1983 requires some  
17 kind of state action. Plaintiff complaint alleges that the actions of the Duffs  
18 are intertwined with the actions of the state actors”.

19 The district court was barred from exercising any authority,  
20 whatsoever, under 28 USC §1331, against the Duff Defendants, without a  
21 “state action” remaining before it in Plaintiff’s §1983 after the Order (#139)  
22 dismissed Defendant State of Nevada, with prejudice, July 12, 2001.

23 The district court, on February 4, 2003, filed its Order (#275)(**ERT**  
24 **119**), granting Plaintiff’s motion for clarification (#274), filed January 30,  
25 2003, giving him the alternative of seeking issuance of a joint pretrial order  
26 in his §1983 action against the Duff Defendants, only, which was a willful  
27 abuse of its discretion to continue to maliciously abuse the legal process by  
28 its total disregard of its jurisdictional defect after the Order (#139) and the

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2 Duff Defendants' constitutional rights.

3 Plaintiff's dilatory conduct and his freckles approach to this action as  
4 a vexatious litigant continues to maliciously abuse the legal process in order  
5 to satisfy his emotional and financial agendas he created by resurrecting his  
6 §1983 complaint in his Joint Pretrial Order proposal (#276) (**ERT 120**),  
7 filed February 27, 2003, after the Order (#139) terminated his action for  
8 redress under 42 USC §1983 July 12, 2001.

9 The district court refuses to acknowledge its jurisdictional defect and  
10 continues to willfully abuse its discretion with the filing of its Order (#277)  
11 (**ERT 136**) February 27, 2003, "that the Clerk shall, therefore, issue a  
12 pretrial notice order with respect to plaintiff and Tyrone and Linda Duff  
13 who are the only remaining defendants in the case", which was evident, the  
14 district court, after the Order (#139), unlawfully modified Plaintiff's  
15 complaint for redress under 42 USC §1983 to a common law action against  
16 Duff Defendants only, which perpetrated a fraud upon the court.

17 On March 25, 2003, the Duff Defendants filed their fourth Motion  
18 (#279)(**ERT 137**) to Dismiss, arguing without a "state action" remained  
19 before the district court after the Order (#139) dismissed Defendant State of  
20 Nevada, with prejudice, the Plaintiff was no longer litigating a cognizable  
21 cause of action under color of state law of his one (1) claim §1983  
22 conspiracy but rather a common law action that was not before the district  
23 court and therefore it lacked federal jurisdiction under 28 USC §1331 to  
24 hear. The district court's Order (#286)(**ERT 152**), filed May 2, 2003,  
25 granted Plaintiff's motion (#280) to strike Duff Defendants' Motion (#279)  
26 that is was not timely filed and the "defendants offer no reason why such  
27 motion should be considered at this late stage in the proceedings".

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2 The Duff Defendants filed their Motion (#287)(**ERT 153**) for  
3 reconsideration of the Order (#286), filed May 2, 2003, with good cause  
4 appearing, to correct manifest errors of law that deprived them of their due  
5 process and equal protection rights, arguing statutory law enacted by  
6 Congress governing an action for redress under 42 USC §1983 barred the  
7 district court from exercising any authority, whatsoever, under 28 USC  
8 §1331, in the Plaintiff's §1983 action, for the issuance of any orders and  
9 judgments without a "state action" remaining before it after the Order  
10 (#139) dismissed Defendant State of Nevada, with prejudice, July 12, 2001.

11 The district court denied Duff Defendants' Motion (#287) in its  
12 Order (#288)(**ERT 162**), filed May 20, 2003, stating the "motion offers  
13 nothing new." The Duff Defendants, with good cause appearing, on June  
14 3, 2003, filed their Motion (#290) for Order of Clarification of the Order  
15 (#288) for the reason why its jurisdictional defect after the Order (#139)  
16 terminated its federal jurisdictional under 28 USC §1331 July 12, 2001  
17 "offered nothing new".

18 Rather than clarify, the district court filed its Order (#291)(**ERT 163**)  
19 June 5, 2003, denying Duff Defendants' Motion (#290) for Order of  
20 clarification. The Duff Defendants, on June 12, 2003, filed their Objection  
21 (#292)(**ERT 164**) to the Order (#291), arguing it must first satisfy its  
22 jurisdictional defect before it can exercise any authority, whatsoever, under  
23 28 USC §1331, in Plaintiff's §1983 action, against the Duff Defendants  
24 without a "state action" remaining before it after the Order (#139).

25 On June 17, 2003, the district court filed its Order (#293)(**ERT 196**)  
26 holding, "The Objection (#292) to the order (Doc. #291) filed June 5, 2003,  
27 will be treated as a motion for reconsideration of our order (#291)" and  
28 "denied" as "it is without merit", which violated the due process and equal

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 The Duff Defendants filed their Motion (#287)(**ERT 153**) for  
3 reconsideration of the Order (#286), filed May 2, 2003, with good cause  
4 appearing, to correct manifest errors of law that deprived them of their due  
5 process and equal protection rights, arguing statutory law enacted by  
6 Congress governing an action for redress under 42 USC §1983 barred the  
7 district court from exercising any authority, whatsoever, under 28 USC  
8 §1331, in the Plaintiff's §1983 action, for the issuance of any orders and  
9 judgments without a "state action" remaining before it after the Order  
10 (#139) dismissed Defendant State of Nevada, with prejudice, July 12, 2001.

11 The district court denied Duff Defendants' Motion (#287) in its  
12 Order (#288)(**ERT 162**), filed May 20, 2003, stating the "motion offers  
13 nothing new." The Duff Defendants, with good cause appearing, on June  
14 3, 2003, filed their Motion (#290) for Order of Clarification of the Order  
15 (#288) for the reason why its jurisdictional defect after the Order (#139)  
16 terminated its federal jurisdictional under 28 USC §1331 July 12, 2001  
17 "offered nothing new".

18 Rather than clarify, the district court filed its Order (#291)(**ERT 163**)  
19 June 5, 2003, denying Duff Defendants' Motion (#290) for Order of  
20 clarification. The Duff Defendants, on June 12, 2003, filed their Objection  
21 (#292)(**ERT 164**) to the Order (#291), arguing it must first satisfy its  
22 jurisdictional defect before it can exercise any authority, whatsoever, under  
23 28 USC §1331, in Plaintiff's §1983 action, against the Duff Defendants  
24 without a "state action" remaining before it after the Order (#139).

25 On June 17, 2003, the district court filed its Order (#293)(**ERT 196**)  
26 holding, "The Objection (#292) to the order (Doc. #291) filed June 5, 2003,  
27 will be treated as a motion for reconsideration of our order (#291)" and  
28 "denied" as "it is without merit", which violated the due process and equal

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2 protection clause of the Fourteenth Amendment by its refusal to  
3 acknowledge its jurisdictional defect. Without proper jurisdiction, the  
4 district court could not proceed at all but could only note its jurisdictional  
5 defect and dismiss the Plaintiff's §1983 action for lack of jurisdiction.

6 The district court filed its Report and Recommendation of U.S.  
7 Magistrate Judge (#294)(**ERT 197**) on June 19, 2003 holding, "This matter  
8 was referred to the Magistrate Judge to settle the Pretrial Order on May 1,  
9 2003 (Doc. #286)." In total disregard for the district court's jurisdictional  
10 defect, U.S. Magistrate Judge McQuaid held the hearing on June 19, 2003,  
11 (#296)(**ERT 199**) against Duff Defendants only, in Plaintiff's §1983 action,  
12 without a "state action" remaining before it after the Order (#139)  
13 dismissed Defendant State of Nevada with prejudice that terminated its  
14 federal jurisdiction under 28 USC §1331 July 12, 2001.

15 On June 27, 2003, Duff Defendants filed their fifth Motion (#297)  
16 (**ERT 200**) to Dismiss based on the district court continuing refusal to  
17 acknowledge its jurisdictional defect without a "state action" remaining  
18 before it after the Order (#139) and put an end to the Plaintiff's continuing  
19 malicious abuse of the legal process through his dilatory conduct and  
20 feckless approach to the action as a vexatious litigant by filing duplicate  
21 pleadings on his one (1) claim of §1983 conspiracy after his complaint for  
22 redress under 42 USC §1983 was terminated in the Order (#139), filed July  
23 12, 2001. Instead the district court denied the Duff Defendants' Motion  
24 (#297) as "moot" in its Order (#307)(**ERT 304**), filed August 27, 2003, that  
25 held "in light of the entry of default against them in accordance with our  
26 order (#299)" that perpetrated a fraud upon the court.

27 The Duff Defendants, on July 1, 2003, filed their Objection (#298)  
28 (**ERT 209**) to Magistrates Judge McQuaid's Report and Recommendation

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2 (#294), arguing the district court lacked federal jurisdiction under 28 USC  
3 §1331 for its issuance without a “state action” remaining before it after the  
4 Order (#139) dismissed Defendant State of Nevada with prejudice that  
5 terminated the Plaintiff’s complaint for redress under 42 USC §1983 July  
6 12, 2001.

7 The district court, on July 10, 2003, filed its Order (#299)(**ERT 297**)  
8 holding, “that the Report and Recommendation (#294) is Adopted and  
9 Approved by the Court. . . hereby Ordered that a default is entered against  
10 Defendants Duff. . . Further Ordered Plaintiff shall have twenty (20) days  
11 within to file points and authorities and evidence of damages by way of  
12 declaration, affidavit, or other admissible evidence. . All evidence must be  
13 in a form which would be admissible at trial,” after the district court’s  
14 Order (#232) held the State Defendants are the prevailing parties in this  
15 §1983 action because Plaintiff’s complaint was frivolous, unreasonable and  
16 without foundation and totally lacked merit since he lacked any admissible  
17 evidence of a conspiracy and failed to allege a deprivation of constitutional  
18 right, and therefore cannot maintain a §1983 claim (See ERT 93-96), yet ,  
19 its Order (#299) holds the Plaintiff’s complaint against the Duff Defendants  
20 “only” was meritorious, where the Order (#142) held “Plaintiff’s complaint  
21 alleges that the actions of the Duffs are intertwined with the actions of the  
22 state actors.” See ERT 51

23 Plaintiff’s dilatory conduct and feckless approach to the action was  
24 evident when he filed his Points and Authorities (#302)(**ERT 298**) August  
25 4, 2003. The Duff Defendants filed their Response (#313)(**ERT 305**)  
26 October 6, 2003, for the district court to satisfy its jurisdictional defect and  
27 put an end to the Plaintiff’s continuing dilatory conduct as a vexatious  
28 litigant, where he resurrect his §1983 complaint on his one (1) claim of

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2 §1983 conspiracy that was terminated in the Order (#139) dismissing  
3 Defendant State of Nevada with prejudice July 12, 2001, clearly established  
4 his continuing malicious abuse of the legal process to satisfy his emotional  
5 and financial agendas he created. See ERT 20, 37, 47, 88

6 On October 24, 2003, the district court filed its Order (#315)(**ERT**  
7 **482**) to set a hearing for January 27, 2004 with respect to damages to be  
8 awarded to Plaintiff, with total disregard for its jurisdictional defect after  
9 the Order (#139) terminated its federal jurisdiction under 28 USC §1331  
10 July 12, 2001.

11 Duff Defendants filed their Objection (#316)(**ERT 483**) November 6,  
12 2003, arguing the district court continues to ignore its jurisdiction defect  
13 that barred it from exercising any authority, whatsoever, against them  
14 including but not limited to, the issuance of its Order (#315) setting hearing  
15 for January 27, 2004, without a “state action” remaining before it after the  
16 Order (#139) dismissed Defendant State of Nevada with prejudice that  
17 terminated the Plaintiff’s §1983 action and its federal jurisdiction under 28  
18 USC §1331 July 12, 2001.

19 The district court, in its Order (#317) (**ERT 522**), filed November 11,  
20 2003, held it would treat the Duff Defendants’ Objection as a Motion for  
21 reconsideration of its Order (#315) and therefore denied, which was a  
22 willful abuse of its discretion for want of jurisdiction.

23 Duff Defendants filed their Notice to the Court (#319)(**ERT 523**)  
24 January 23, 2004, that they cannot participate in the hearing set for January  
25 27, 2004, when the district court lacked federal jurisdictional to exercise  
26 any authority, whatsoever, under 28 USC §1331 against them with no “state  
27 action” remaining before it after the Order (#139) terminated the Plaintiff  
28 complaint for redress under 42 USC §1983 July 12, 2001.



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2 On January 27, 2004, the district court filed its Order (#320)(ERT  
3 547) based on its hearing January 27, 2004 held:

4 That damages sought for lost income from the contract of  
5 Western Counseling Services and the State of Nevada is  
6 found to be \$150,000.00. The Court awards, for lost income  
7 on the sale of the business, \$30,000.00.

8 The Court finds that doctor Lewis, the plaintiff, has suffered  
9 damages on account of loss of his forensic business, due to  
10 the conduct of the Duffs, in the amount of \$100,000.00.

11 The Court finds that plaintiff is not entitled to recover legal  
12 fees incurred in the State Court action with the Duffs. Such  
13 was not pled in the complaint and further, the usual practice  
14 is that such damages have to be recovered in the action in the  
15 action where they were incurred, rather than an independent  
16 action.

17 The Court denies recovery of damages on account of the  
18 Duff unpaid invoice, this was not pled in the complaint.

19 The Court finds an aware of punitive damages, in the amount  
20 of \$50,000, will be made.

21 The Court finds an aware of future damages does not appear  
22 to be appropriate.

23 The Clerk will enter judgment (#321)(ERT 549) on January 27, 2004  
24 as follows:

25 That judgment is hereby entered In the amount of \$280,000.00  
26 for compensatory damages, and in the amount of \$50,000.00  
27 for punitive damages, in favor of the plaintiff and against  
28 defendants Linda Duff and Tyrone Duff.

That judgment is further entered in favor of all the other  
defendants in the case, and against plaintiff, as to the claims  
of plaintiff against the defendants other than the Duffs.

The district court was not operating under the Constitution and rule  
of law when it framed Duff Defendants with a fraudulent default judgment  
(#321) awarding compensatory damages in the amount of \$280,000.00 and  
punitive damages in the amount \$50,000 against them in favor of Plaintiff;  
and in favor of the State Defendants against the Plaintiff, without a "state  
action" remaining before it after the Order (#139) simultaneously

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2 terminated the Plaintiff's complaint for redress under 42 USC §1983 and its  
3 federal jurisdiction under 28 USC §1331 July 12, 2001.

4 The district court held both the State Defendants and the Plaintiff are  
5 the prevailing parties in this §1983 action, which was legally impossible,  
6 given the fact, there is only one way both the State Defendant and the  
7 Plaintiff could be the prevailing parties and default judgment entered  
8 against the Duff Defendants in the amount of \$330,000.00, the case was  
9 fixed, the hearings rigged and the outcome predetermined in favor of the  
10 State Defendants and the Plaintiff and against Duff Defendants, which  
11 spelled conspiracy against their constitutional rights in order to defraud  
12 them of \$330,000.00 that perpetrated a fraud upon the court.

13 On February 9, 2004, Plaintiff filed his Bill of Costs (#323)(**ERT**  
14 **550**) against Duff Defendants and again on May 7, 2004 (#358) that reflects  
15 the same Bill of Cost the AG billed him. See ERT 98 The Bill of Costs  
16 shows Plaintiff and the AG hired a mediator, Robert G. Berry, Ltd., August  
17 1, 2001 for mediation without the Duff Defendants knowledge that denied  
18 them any participation in their defense, in violation of their due process and  
19 equal protection rights guaranteed by the Fourteenth Amendment.

20 Duff Defendants filed their Response (#335)(**ERT 581**) to Plaintiff's  
21 Bill of Cost (#323), February 26, 2004, arguing they are not responsible for  
22 Plaintiff's continuing malicious abuse of the legal process through his  
23 dilatory and feckless conduct as a vexatious litigant (see ERT 49, 88-96) to  
24 further defraud the Duff Defendants of \$5627.79 after the Order (#139)  
25 terminated his complaint for redress under 42 USC §1983 July 12, 2001.

26 Plaintiff filed his Notice of Appeal (#324) on February 11, 2004, to  
27 the Ninth Circuit, in case no. 04-15269, on the Order (#320) and default  
28 judgment (#321).

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2 Duff Defendants filed their Notice of Appeal (#326) February 12,  
3 2004, to the Ninth Circuit, in case no. 04-15326, on the same Order (#320)  
4 and default judgment (#321) as the Plaintiff, which their Opening Brief,  
5 filed October 15, 2004, argued the Plaintiff's appeal must be denied and  
6 their appeal must be granted, since the Order (#139) simultaneously  
7 terminated his complaint for redress under 42 USC §1983 and the district  
8 court's federal jurisdiction under 28 USC §1331 July 12, 2001.

9 Duff Defendants filed their Motion (#327)(**ERT 572**) to Stay Final  
10 Judgment (#321), February 12, 2004, pending the outcome of their appeal.  
11 The district court's Order (#357)(**ERT 593**), April 9, 2004, denied the Duff  
12 Defendants' Motion (#327) to Stay Final Judgment (#321).

13 The Ninth Circuit conducted unlawful mediation, in case no. 04-  
14 15269, with the AG, State Defendants, Plaintiff and his attorneys of record,  
15 in Plaintiff's §1983 action, from March 2004 through and including January  
16 5, 2005, with nineteen (19) orders issued, on the exact same Order (#320)  
17 and default judgment (#321) in the Duff Defendants' cross appeal in case  
18 no. 04-15326, in which they were denied any participation, whatsoever, in  
19 their defense and barred from obtaining copies of said orders by order of the  
20 Ninth Circuit, in violation of their due process and equal protection rights  
21 guaranteed by the Fourteenth Amendment that prejudice them.

22 On May 1, 2006, the Ninth Circuit filed their Memorandum (#373)  
23 (**ERT 597**) and Judgment (#374)(**ERT 601**) on the Duff Defendants appeal  
24 in case no. 04-15326, that held:

25 Tyrone Duff, and Linda Duff (the Duffs) appeal pro se the  
26 district court's default judgment entered in favor of Richard  
Lewis.

27 Notwithstanding the Duffs dilatoriness, default judgment was  
28 not the appropriate sanction in this case. See *In re First T.D.  
& Investments, Inc.*, 253 F.3d 520, 532 (9<sup>th</sup> Cir. 2001). Given

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2 the district court's previous orders dismissing the state actors--  
3 rendering it impossible for Lewis to prevail on the merits--  
4 imposing default judgment for the amount of \$330,000 as a  
sanction for not participating is incongruous and ultimately  
excessive. See *id.*

5 Although a sanction in this case is appropriate requiring the  
6 Duffs to pay \$330,000 dollars to Lewis proves too much. We  
7 recognize district court's inherent need to have the ability to  
curtail dilatory conduct that would slow impermissibly the  
8 wheels of justice. We recognize also this district court need to  
address the Duffs' feckless approach to this action.

9 However, allowing Lewis to collect nearly a third of a million  
10 dollars based on a legal theory that has no potential for success  
is unreasonable and unfair.

11 Accordingly, we remand the case to the district court for the  
12 imposition of a more appropriate sanction against the Duffs and  
a determination based on the merits. **Reversed and Remanded.**

13 Even with the Ninth Circuit's unlawful mediation and modification  
14 of the district court's Order (#320) and default judgment (#321) to a  
15 sanction against Duff Defendants, in the amount of \$330,000.00, it could  
16 not overcome the Order (#139) simultaneously terminated the Plaintiff's  
17 complaint for redress under 42 USC §1983 and the district court's federal  
18 jurisdiction under 28 USC §1331 July 12, 2001, two (2) years prior to the  
19 hearing held June 19, 2003 that perpetrated a fraud upon the Ninth Circuit.

20 The Ninth Circuit was bound by the Constitution and the rule of law  
21 to set aside the two appeals as moot and note the district court's  
22 jurisdictional defect and vacate the Plaintiff's §1983 action, in its entirety,  
23 for lack of jurisdiction to prevent a fraud upon the court.

24 The Clerk of the Court filed its Memorandum (#359)(**ERT 594**) May  
25 7, 2004 awarding costs in favor of the Plaintiff against the Duff Defendants  
26 in the amount of \$4814.05, which was "fraud" without a "state action"  
27 remaining before it after the Order (#139) terminated his complaint for  
28 redress under 42 USC §1983 July 12, 2001.

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2 The Plaintiff filed two Requests for Case Status, on September 18,  
3 2007 (#375) and February 4, 2008 (#376) to the district court reiterating the  
4 Ninth Circuit's Memorandum, filed May 1, 2006, that held it was  
5 impossible for the Plaintiff to prevail on the merits against Duff Defendants  
6 without a "state action" after district court dismissed the state actors.

7 On April 23, 2008, Plaintiff's attorneys of record, Marie C. Mirch,  
8 filed Notice to the Court (#377)(**ERT 603**) pertaining to the disbarment of  
9 Plaintiff's lead attorney, Kevin J. Mirch, pursuant to Nevada Supreme  
10 Court Rule 115. Kevin J. Mirch, Esq. was disbarred for filing a frivolous  
11 lawsuit, which the State Bar of Nevada held he has a history of, which was  
12 the exact same misconduct he displayed in this case.

13 The district court continue to act in face of its jurisdictional defect  
14 with the filing of its Order (#378)(**ERT 604**), July 29, 2008, for the Duff  
15 Defendants to show cause why their conduct does not warrant sanctions,  
16 where it was clear without a "state action" remaining before it after the  
17 Order (#139) dismissed Defendant State of Nevada, with prejudice, it had  
18 no federal jurisdiction under 28 USC §1331, in the Plaintiff's §1983 action,  
19 for the issuance of including, but not limited to, its Order (#378).

20 Further, the district court lacked authority to order the Plaintiff to  
21 submit an item statement that are directly related to his action against Duff  
22 Defendants "only" during the timeline between July 5, 2002 and February  
23 12, 2004 designated by the court, where it could not overcome its  
24 jurisdictional defect after the Order (#139) simultaneously terminated the  
25 Plaintiff's complaint for redress under 42 USC §1983 and its federal  
26 jurisdiction under 28 USC §1331 July 12, 2001.

27 On August 11, 2008, Duff Defendants responded to the Order (#378)  
28 with their Motion (#379)(**ERT 607**) challenging the district court's federal

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2 jurisdiction under 28 USC §1331 it assert, in Plaintiff's §1983 action,  
3 against the Duff Defendants without a "state action" remaining before it  
4 after the Order (#139) dismissed Defendant State of Nevada, with prejudice  
5 July 12, 2001.

6 Seven (7) years after the Order (#139) simultaneously terminated the  
7 Plaintiff complaint for redress under 42 USC §1983 and the district court's  
8 federal jurisdiction under 28 USC §1331 July 12, 2001, Plaintiff continues  
9 to maliciously abuse the legal process with the filing of his Response  
10 (#380)(**ERT 616**) to Order (#378) August 22, 2008 and submitted an  
11 itemization of attorney time, services, fees and expenses incurred that are  
12 directly related to his §1983 action against Duff Defendants only from the  
13 time line of July 5, 2002 (grant of summary judgment) to February 12, 2004  
14 (Duff Defendants' appeal) after the Order (#142) held "Plaintiff's complaint  
15 alleges that the actions of the Duffs are intertwined with the actions of the  
16 state actors."

17 It was evident Plaintiff's fees/costs incurred directly related to Duff  
18 Defendants was "fraud", in order to satisfy his emotional and financial  
19 agendas he created, specifically, after the Order (#139) terminated his  
20 complaint for redress under 42 USC §1983 based on his agreement with the  
21 AG and the district court's federal jurisdiction under 28 USC §1331 July  
22 12, 2001. The Plaintiff quit participated in any further proceedings after  
23 August 22, 2008 and the State Defendants quit participated after August 16,  
24 2002.

25 The district court filed its Order (#381)(**ERT 622**) September 2,  
26 2008, for the Duff Defendants to show cause why their conduct over the  
27 course of the proceedings should not result in the imposition of a sanction  
28 against them for exercising their constitutional rights in defense of the

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2 Plaintiff and the district court malicious abuse of the legal process for seven  
3 (7) years without a “state action” remaining before it, in the Plaintiff’s  
4 §1983 action, after the Order (#139) dismissed Defendant State of Nevada,  
5 with prejudice that terminated the Plaintiff’s §1983 action and its federal  
6 jurisdiction under 28 USC §1331 July 12, 2001.

7 The AG nor the State Defendants appeared at the hearing held June  
8 19, 2003, therefore, no sanctions and/or fees can be entered against the Duff  
9 Defendants for their nonappearance at said hearing unless said sanctions/  
10 fees are entered against the State Defendants as well, where the Order  
11 (#142) held, “Plaintiff’s complaint alleges that the actions of the Duffs are  
12 intertwined with the actions of the state actors.” Specifically, where the  
13 Ninth Circuit held it was impossible for the Plaintiff to prevail on the merits  
14 against the Duff Defendants without a “state action” after the district court  
15 dismissed the state actors.

16 The district court, on September 4, 2008, filed its Order (#382)(ERT  
17 **624**) unlawfully modified Duff Defendants’ Motion (#379) challenging  
18 its jurisdiction holding:

19 “Before the court is a motion to dismiss for lack of subject  
20 matter jurisdiction (#379) filed by Linda and Tyrone Duff  
21 (the “Duffs”). No opposition has been filed. This court has  
jurisdiction pursuant to 28 USC §1331 as this action arose  
under the laws of the United States.

22 Specifically, plaintiff Richard Lewis brought this action under  
23 42 U.S.C. §1983. The fact that Plaintiff cannot prevail in this  
24 action does not affect the court’s subject matter jurisdiction. It  
is therefore ordered that the Duffs’ motion to dismiss (#379)  
is hereby denied.”

25 The Order (#382) was fraud, in its entirety, where the district court  
26 jurisdictional defect barred it from exercising any authority, whatsoever,  
27 under 28 USC §1331 for the issuance of, including but not limited to, its  
28 Order (#382) against the Duff Defendants without a “state action”

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2 remaining before it after the Order (#139) dismissed Defendant State of  
3 Nevada, with prejudice, that terminated the Plaintiff's complaint for redress  
4 under 42 USC §1983 and its federal jurisdiction under 28 USC §1331 July  
5 12, 2001. This was further supported by the Ninth Circuit that held it was  
6 impossible for the Plaintiff to prevail on the merits against the Duff  
7 Defendants without a "state action" after the district court dismissed the  
8 state actors terminating its federal jurisdiction under 28 USC §1331.

9 On September 5, 2008, the district court entered its Order (#383)  
10 (**ERT 625**) and judgment (#384)(**ERT 635**) that framed Duff Defendants  
11 with a fraudulent judgment in the amount of \$23,149.98, in favor of the  
12 Plaintiff, where its jurisdictional defect barred it from acting without a  
13 "state action" remaining before it for 7 years after the Order (#139)  
14 dismissed Defendant State of Nevada, with prejudice that simultaneously  
15 terminating the Plaintiff's complaint for redress under 42 USC §1983 and  
16 the district court's federal jurisdiction under 28 USC §1331 July 12, 2001.

17 On October 20, 2008, the district court filed its Order (#387)(**ERT**  
18 **636**) in the face of its jurisdictional defect holding its pre-filing order  
19 (#383) to reviewed filings of the Duff Defendants including their Motion  
20 (#388)(**ERT 638**), dated September 16, 2008, challenging the district  
21 court's jurisdiction that unlawfully modified the Duffs' pending Motion  
22 (#379) to a Motion to Dismiss. "The above reference motion challenging  
23 the jurisdiction of the court has been previously addressed in the court's  
24 order denying jurisdictional challenge (#382). None of the Duffs'  
25 arguments would cause the court to depart from its earlier order (#382) and  
26 the motion is, therefore, denied."

27 Duff Defendants filed their Notice of Appeal (#389), in case no. 08-  
28 17314, to the Ninth Circuit on October 21, 2008 with their opening brief,



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2 filed February 9, 2009, arguing the district court continues to refuse to  
3 acknowledge its jurisdictional defect that barred it from exercising any  
4 authority, whatsoever, under 28 USC §1331 against them without a “state  
5 action” remaining before it after the Order (#139) dismissed Defendant  
6 State of Nevada, with prejudice, that simultaneously terminated Plaintiff’s  
7 complaint for redress under 42 USC §1983 and its federal jurisdiction under  
8 28 USC §1331 July 12, 2001.

9 Therefore, it was Plaintiff’s dilatory conduct and feckless approach to  
10 the action as a vexatious litigant that caused the district court to continue to  
11 exercise authority against the Duff Defendants for 7 years without a “state  
12 action” remaining before it after the Order (#139) dismissed Defendant  
13 State of Nevada with prejudice, July 12, 2001. Plaintiff never filed a  
14 response and/or appearance to Duff Defendants’ opening brief.

15 On December 30, 2008, the district court filed its Order (#405)(**ERT**  
16 **678**) on Duff Defendants’ Motion (#406)(**ERT 679**), dated December 22,  
17 2008, challenging its federal jurisdiction under 28 USC §1331 it continues  
18 to assert for 7 years after the Order (#139) dismissed Defendant State of  
19 Nevada with prejudice, terminating the Plaintiff’s complaint for redress  
20 under 42 USC §1983 July 12, 2001.

21 The district court held “it had no jurisdiction upon which to act upon  
22 the subject motion by virtue of the Defendant Duffs’ pending appeal” but  
23 ignored its jurisdictional defect after the Order (#139) simultaneously  
24 terminated Plaintiff’s complaint for redress under 42 USC §1983 and its  
25 federal jurisdiction under 28 USC §1331 July 12, 2001. This was present to  
26 the Ninth Circuit in Duff Defendants’ informal opening brief, filed  
27 February 9, 2008, in case no. 08-17314.

28 ///

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2 The Ninth Circuit filed its Memorandum/Opinion (#412)(**ERT 690**)  
3 March 18, 2011 on Duff Defendants’ appeal, holding we vacate the Order  
4 (#383) and judgment (#384) and vacated the district court “sanction” of  
5 \$23,149.98 against them as it was a “serious criminal penalty” because it  
6 was criminal in nature and they were entitled to the full due process  
7 protections of a criminal jury trial, which they did not receive and we also  
8 vacate the entry of the pre-filing review order and remanded for further  
9 proceedings against them without a “state action” remaining before it after  
10 the Order (#139) dismissed Defendant State of Nevada, with prejudice, July  
11 12, 2001. The Ninth Circuit was bound by the Constitution and the rule of  
12 law to note the district court’s jurisdictional defect and vacate the Plaintiff’s  
13 §1983 action, in its entirety, for lack of jurisdiction without a “state action”  
14 remaining before it after it dismissed the state actors.

15 The Ninth Circuit filed its Mandate (#413)(**ERT 693**) March 28,  
16 2011, that held “The judgment of this Court, entered November 23, 2010,  
17 takes effect this date.”

18 With no filings or participation in the proceedings by the Plaintiff  
19 since August 22, 2008 nor by the State Defendants since August 16, 2002,  
20 the district court, on April 13, 2011, filed its Mandate (#414)(**ERT 694**)  
21 holding that a hearing is set concerning the entry of monetary sanctions and  
22 a pre-filing review order against Duff Defendants only, in violation of its  
23 Order (#142) that held, “The Duffs are correct in their assertion that a claim  
24 for section 1983 requires some kind of state action. Plaintiff’s complaint  
25 alleges that the actions of the Duffs are intertwined with the actions of the  
26 state actors” that cease to exist after the Order (#139), filed July 12, 2001.

27 Duff Defendants filed their Motion (#415)(**ERT 695**) to Stay on  
28 Mandate (#414) pending the outcome of their Petition for Writ of Certiorari

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2 before the United States Supreme Court on April 27, 2011. Without any  
3 time allotted for the other parties to responded, the district court file its  
4 Order (#416) (**ERT 719**) on the same day, April 27, 2011, holding that the  
5 Duff Defendants' Motion (#415) was without merit and therefore denied.

6 On May 3, 2011, the district court held a hearing (#417)(**ERT 720**)  
7 regarding monetary sanctions and pre-filing review order, with no parties  
8 and/or their attorneys present and no objections have been filed and ordered  
9 the matter stands submitted, without a "state action" remaining before it ten  
10 (10) years after the Order (#139) simultaneously terminated the Plaintiff's  
11 complaint for redress under 42 USC §193 and its federal jurisdiction under  
12 28 USC §1331 July 12, 2001 and three (3) years after the Plaintiff stopped  
13 participating in the proceedings August 22, 2008 and nine (9) years after  
14 State Defendants stopped participating in the proceedings August 16, 2002.

15 Duff Defendants filed a Request for Case Status (First Request)  
16 (#422)(**ERT 722**) March 28, 2013 based on the last entry by the Plaintiff on  
17 August 22, 2008 (#380) and the last entry by the district court on September  
18 6, 2011 (#419). The Duff Defendants sent a letter to the Clerk (#423)(**ERT**  
19 **725**), filed April 15, 2013, to correct the filing error, where this was not a  
20 motion but a request that required no response from the other parties.

21 On May 10, 2013, the district court filed its Order (#424)(**ERT 727**)  
22 ordering sanctions to be entered against Duff Defendants for their "dilatary  
23 conduct" in exercising their constitutional rights in defense of the district  
24 court continuing to act against them without a "state action" remaining  
25 before it twelve (12) years after the Order (#139) dismissed Defendant State  
26 of Nevada with prejudice that simultaneously terminated the Plaintiff's  
27 complaint for redress under 42 USC §1983 and its federal jurisdiction under  
28 28 USC §1331 July 12, 2001 and is now continuing to act as an advocate on

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2 behalf of Plaintiff and the State Defendants after they stopped participating  
3 in the proceedings.

4 Without the Plaintiff participating in any proceedings since August  
5 22, 2008, “in his §1983 action”, the district court entered judgment (#425)  
6 (**ERT 729**) May 10, 2013, rewarding him for his continuing abuse of the  
7 legal process through his dilatory conduct and feckless approach to the  
8 action as a vexatious litigant after his §1983 action was terminated in the  
9 Order (#139), filed July 12, 2001.

10 On May 10, 2013, the district court filed its Order (#426)(**ERT 730**)  
11 holding:

12 Pursuant to the court’s Order #383, filed September 4, 2008,  
13 defendants must seek the court’s prior permission before filing  
14 a document. Defendants have sent their Request for Case Status  
15 (Second Request), dated May 6, 2013, to the court for consider-  
16 ation. It is hereby Ordered that defendants’ request to file this  
17 document is Granted and the Clerk of the Court shall file the  
18 document. It is further Order that the court’s order #424, filed  
19 May 10, 2013, shall be deemed sufficient response to the  
20 defendants’ second request for case status.”

21 Duff Defendants sent their second Request for Case Status (#427)  
22 (**ERT 731**) dated May 6, 2013. The district court had stamped received on  
23 May 9, 2013 but held for “pre-filing review by the district court in  
24 accordance with its Order (#383), filed September 4, 2008”, before filing it  
25 May 10, 2013, after the Ninth Circuit vacated the district court’s entry of  
26 the pre-filing review order in its Memorandum, filed March 28, 2011, in  
27 case no. 08-17314.

28 On June 7, 2013, Duff Defendants filed their Notice of Appeal  
29 (#429)(**ERT 734**) to the Ninth Circuit, in case no. 13-16181, along with  
30 their designation of and request for transmission of record on appeal (#431)  
31 (**ERT 737**) and designation of and request for transmission of record on  
32 appeal (no transcript requested)(#432)(**ERT 740**).

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2 **3. What did you ask the originating court to do?**

3 The district court acknowledge its jurisdictional defect and dismiss  
4 the Plaintiff's complaint for redress under 42 USC §1331 for lack of  
5 jurisdiction after the Order (#139) or prove on the record the federal  
6 jurisdiction under 28 USC §1331 it continues to assert against the Duff  
7 Defendants "only" exists without a "state action" remaining before it twelve  
8 (12) years after the Order (#139) dismissed Defendant State of Nevada,  
9 with prejudice, July 12, 2001. Specifically, the Ninth Circuit held it was  
10 impossible for the Plaintiff to prevail on the merits against the Duff  
11 Defendants without a "state action" after the district court dismissed the  
12 state actors, where the Order (#142) held, "Plaintiff's complaint alleges the  
13 actions of the Duffs was intertwined with the actions of the state actors".

14 The district court to prove on the record it had federal jurisdiction  
15 under 28 USC §1331, in Plaintiff's §1983 action, to enter sanctions and/or  
16 fees against the Duff Defendants in favor of the Plaintiff, for the time line  
17 of July 5, 2002 to February 12, 2004, without a "state action" remaining  
18 before it after the Order (#139) dismissed Defendant State of Nevada with  
19 prejudice July 12, 2001.

20 The district court to declare the Plaintiff a vexatious litigant and enter  
21 sanction, under Rule 11 and 28 USC §1927, against him for his dilatory  
22 conduct and feckless approach to the action that maliciously abused the  
23 legal process and caused the district court to abuse its discretion by  
24 continuing to act against the Duff Defendants, in Plaintiff's §1983 action,  
25 without a "state action" remaining before it for twelve (12) years after the  
26 Order (#139) dismissed Defendant State of Nevada, with prejudice July 12,  
27 2001.

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2 **4. State the claim or claims you raised at the originating court.**

3 Statutory law enacted by Congress governing an action for redress  
4 under 42 USC §1983 barred the district court from exercising any authority,  
5 whatsoever, under 28 USC §1331, against the Duff Defendants only for,  
6 including but not limited to, their nonappearance at the hearing held June  
7 19, 2003, without a “state action” remaining before it after the Order (#139)  
8 dismissed Defendant State of Nevada with prejudice that simultaneously  
9 terminated the Plaintiff’s complaint for redress under 42 USC §1983 and its  
10 federal jurisdiction under 28 USC §1331 July 12, 2001.

11 Nevada statutory law under NRS 41.0337 barred the district court  
12 from exercising any authority, whatsoever, under 28 USC §1331 against the  
13 Duff Defendants without the State of Nevada named a party defendant a  
14 party defendant under NRS 41.031(2), which was legally impossible after  
15 the Order (#139) dismissed Defendant State of Nevada with prejudice that  
16 simultaneously terminated the Plaintiff’s complaint for redress under 42  
17 USC §1983 and its federal jurisdiction under 28 USC §1331 July 12, 2001.

18 Duff Defendants have absolute immunity under NRS 641.318 from  
19 any further action taken against them by the Plaintiff, including but not  
20 limited to the hearing held June 19, 2003, where the Order (#232) held his  
21 complaint was frivolous, unreasonable and without foundation and totally  
22 lacked merit since he lacked any admissible evidence of a conspiracy and  
23 failed to allege a deprivation of a constitutional right and therefore he could  
24 not maintain a §1983 claim (see **ERT 49, 88-96**), which was supported by  
25 the Ninth Circuit that held it was impossible for the Plaintiff to prevail on  
26 the merits against the Duff Defendants without a “state action” after the  
27 district court dismissed the state actors.

28 ///

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 The district court lacked federal jurisdiction under 28 USC §1331 to  
3 enter sanctions and/or fees against the Duff Defendants in favor of the  
4 Plaintiff, for the time line of July 5, 2002 to February 12, 2004, where the  
5 Ninth Circuit held it was impossible for the Plaintiff to prevail on the merits  
6 against the Duff Defendants without a “state action” after the district court  
7 dismissed the state actors in the Order (#139), filed July 12, 2001 and the  
8 Order (#232), filed July 5, 2002.

9 It was the Plaintiff who continued on with his §1983 action that  
10 ceased to exist after the state actors were dismissed, specifically where the  
11 Order (#142) held, “Plaintiff’s complaint alleges the actions of the Duffs  
12 was intertwined with the actions of the state actors.” The Duff Defendants  
13 were exercising their constitutional rights in defense of the district court  
14 continuing to assert it has federal jurisdiction under 28 USC §1331, in  
15 Plaintiff’s §1983 action, against them where it cease to exist after the Order  
16 (#139), filed July 12, 2001.

17 **5. What issues are you raising on appeal? What do you think the**  
18 **originating court did wrong?**

19 Statutory law enacted by Congress governing an action for redress  
20 under 42 USC §1983 barred the district court from exercising any authority,  
21 whatsoever, including but not limited to, the issuance of its orders (#417,  
22 #424, #426) and judgment (#425), filed May 10, 2013, against the Duff  
23 Defendants without a “state action” remaining before it after the Order  
24 (#139) dismissed Defendant State of Nevada, with prejudice; that  
25 simultaneously terminated Plaintiff’s complaint for redress under 42 USC  
26 §1983 and its federal jurisdiction under 28 USC §1331 July 12, 2001.

27 The district court lacked federal jurisdiction under 28 USC 1331, in  
28 Plaintiff’s §1983 action, to enter sanctions and/or fees against the Duff

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 Defendants, in favor of the Plaintiff, for the time line designated by the  
3 district court between July 5, 2002 to February 12, 2004, without a “state  
4 action” remaining before it after the Order (#139) dismissed Defendants  
5 State of Nevada with prejudice, July 12, 2001.

6 Sanctions must be brought against the Plaintiff, under Rule 11 and 28  
7 USC §1927, which is incontrovertible his dilatory and feckless conduct is  
8 responsible for the district court’s willful abuse of its discretion by ignoring  
9 its jurisdictional defect and continue to act without jurisdiction on his behalf  
10 for twelve (12) years after the Order (#139) simultaneously terminated his  
11 §1983 complaint and the district court’s federal jurisdiction under 28 USC  
12 §1331 July 12, 2001, specifically given the fact, Plaintiff quite participating  
13 in the proceeding August 22, 2008.

14 **6. Did you present all these issues listed in #5 to the originating**  
15 **court? Yes If not, why not?**

16 **7. What law supports these issues on appeal?**

17 Federal Courts are authorized to hear cases that arise under the  
18 Constitution, laws, or treaties of the United States. 28 USC §1331.  
19 Plaintiff’s §1983 complaint arose under special statutory law, independent  
20 of common law, enacted by Congress governing an action for redress under  
21 42 USC §1983, which provides civil action for the deprivation of civil  
22 rights “under color of state law” that pursuant to NRS 41.0337, no tort  
23 action arising out of an act or omission within the scope of a person’s  
24 public duties or employment may be brought against any present or former  
25 officer or employee of the State unless the State is named a party defendant  
26 under NRS 41.031(2) that states, “an action may be brought under this  
27 section against the State of Nevada. In any action against the State of  
28 Nevada, the action must be brought in the name of the State of Nevada in



1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 relation of the particular department, commission, board or other agency of  
3 the State whose actions are the basis for the suit.”

4 All the pleadings the Duff Defendants filed after the Order (#139)  
5 dismissing Defendant State of Nevada with prejudice July 12, 2001, were  
6 not ‘frivolous filings’ nor tactics for delay nor were they dilatory or feckless  
7 in nature but to correct manifest errors of law that deprived them of their  
8 due process and equal protection rights guaranteed by the Fourteenth  
9 Amendment. *Franconia Assocs. v. U.S.*, 44 Fed. Cl. 315, 316 (1999)(citing  
10 *Principal Mut. Life Ins. Co. v. United States*, 29 Fed. Cl. 157, 164 (1993)).

11 The Ninth Circuit presented the irrefutable evidence, the district  
12 court lacked federal jurisdiction under 28 USC §1331 for the entry of the  
13 following three judgments (#321, #384, #425) against the Duff Defendants  
14 in favor of the Plaintiff, where it held it was impossible for the Plaintiff to  
15 prevail on the merits against the Duff Defendants without a “state action”  
16 after the district court dismissed the state actors, specifically, where the  
17 Order (#142) held, “Plaintiff’s complaint alleges the actions of the Duffs  
18 was intertwined with the actions of the state actors”.

19 The district court held “the Duffs are correct in their assertion that a  
20 claim for section 1983 requires some kind of state action.” 42 USC §1983.  
21 The assertion of “state action” is in reference to Defendant State of Nevada  
22 and State Defendants. There appears to be no question that the requirement  
23 of "state action" in a §1983 claim is an essential jurisdictional predicate.  
24 *Cannon v. Univ. of Chicago*, 559 F.2d 1063 (7th Cir. 1976); *Braden v.*  
25 *Univ. of Pittsburgh*, 552 F.2d 948 (3rd Cir. 1977)(en banc). Accordingly,  
26 where “state action” is found lacking, the section 1983 complaint is  
27 properly dismissed for lack jurisdiction. *Cannon, supra*.

28 ///

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 Although Section 1983 requires “state action”, actions on the part of  
3 an individual may be treated as state action, if the individual was a “willful  
4 participant in joint action with the state agents.” *Ibarra v. Las Vegas Metro.*  
5 *Police Dept.*, 572 F.Supp. 562, 564 (D. Nev. 1983). The Order (#142) held,  
6 “Plaintiff’s complaint alleges that the actions of the Duffs are intertwined  
7 with the actions of state actors”. The Ninth Circuit held it was impossible  
8 for the Plaintiff to prevail on the merits against the Duff Defendants without  
9 a “state action” after the district court dismissed the state actors. See *In re*  
10 *First T.D. & Investments, Inc.*, 253 F.3d 520, 532 (9<sup>th</sup> Cir. 2001).

11 Therefore, it was legally impossible for the district court’s Order  
12 (#277) to hold “Tyrone and Linda Duff are the only remaining defendants”  
13 in the Plaintiff’s §1983 action. Specifically, where the Ninth Circuit held in  
14 *Briley v. State of California*, 564 F.2d 849 (9<sup>th</sup> Cir. 1977) the “color of state  
15 law” requirement is the equivalent of the “state action” element of the  
16 Fourteenth Amendment; thus section 1983 is not invoked by purely private  
17 conduct only.

18 By the very essence of the district court’s Order (#277), it lacked  
19 federal jurisdiction under 28 USC §1331, where it was legally impossible  
20 for Tyrone and Linda Duff to be the only remaining defendants in the  
21 Plaintiff’s action for redress under 42 USC §1983 without a “state action”  
22 remaining before it after the Order (#139) dismissed Defendant State of  
23 Nevada with prejudice July 12, 2001 and for the district court to continue to  
24 maintain federal jurisdiction under 28 USC §1331, in the Plaintiff’s §1983  
25 action, against the Duff Defendants only in order to enter sanctions against  
26 them. If the court could not legally hear the matter upon the jurisdictional  
27 paper presented, its finding that it had the power can add nothing to its  
28 authority; - it had no authority to make that finding. Without the specific

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 findings of jurisdiction by the court in an order or judgment, the order or  
3 judgment does not comply with the law and is void. No judge has the lawful  
4 authority to make a void order or judgment valid. *Bates v. Bd of Ed.*,  
5 *Allendale Comm. Consolid. Schl. Dist. No. 17*, 136 Ill. 2d 260, 267 (1990)

6 After the Defendant State of Nevada was dismissed with prejudice in  
7 the Order (#139), there was no longer a “state action” on part of the  
8 individual State Defendants and the Duff Defendants. Plaintiff’s one claim  
9 §1983 conspiracy requires some kind of “state action” (*Paratt v. Taylor*,  
10 4451 U.S. 527 (1980)), that no longer exists, which was clearly evident the  
11 district court lacked a “state action” remaining before it after the Order  
12 (#139) dismissed Defendant State of Nevada, with prejudice, July 12, 2001  
13 but continued to confer its federal jurisdiction under 28 USC §1331, in  
14 Plaintiff’s §1983 action, against the Duff Defendants only, for twelve (12)  
15 years, where none existed. *People ex re Gowdy v. Baltimore & Ohio R.R.*  
16 *Co.*, 358 Ill. 2d 86, 92, 52 N.E. 2d 255 (1943). Here, the district court can  
17 only maintain jurisdiction under 28 USC §1331 if a “state action” is  
18 remaining before it for the Plaintiff to continue to litigate his §1983 action  
19 against the Duff Defendants only, which the Order (#139) dismissed  
20 Defendant State of Nevada, with prejudice that properly terminating his  
21 complaint for redress under 42 USC §1983 and its federal jurisdiction under  
22 28 USC §1331 July 12, 2001.

23 Plaintiff’s assertion of a federal civil rights claim against the Duff  
24 Defendants only, from the timeline of July 5, 2002 to February 12, 2004,  
25 when it is clear there was no cognizable claim for the deprivation of a  
26 federal constitutional right is frivolous and without foundation. *Head v.*  
27 *Medford*, 62 F.3d 351, 356 (11<sup>th</sup> Cir. 1995); *Dangler v. Yorktown Central*  
28 *Schools*, 777 F.Supp. 1175, 1177-1178 (S.D.N.Y. 1991); *Carter v. Rollins*

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC  
2 *Cablevision of Massachusetts, Inc.*, 634 F.Supp. 944 (D.Mass. 1986).

3 To prevail in a § 1983 lawsuit, a plaintiff must show that the  
4 defendant deprived him of a federally-secured right while acting under  
5 color of state law. A defendant “acts under color of state law when he  
6 abuses the position given to him by the State.” *Kernats v. O’Sullivan*, 35  
7 F.3d 1171, 1175 (7th Cir. 1994) (quoting *West v. Atkins*, 487 U.S. 42, 49–  
8 50 (1988)). Thus, a defendant “must first possess power by virtue of state  
9 law [and] then misuse that power in a way that violated federal  
10 constitutional rights” to be liable under section 1983. *Id.*

11 Importantly, an individual defendant cannot be held liable under  
12 section 1983 unless he “caused or participated in the alleged constitutional  
13 deprivation.” *Rascon v. Hardiman*, 803 F.2d 269, 273 (7th Cir. 1986). Here,  
14 the Order (#277) held “Tyrone and Linda Duff are the only remaining  
15 defendants in Plaintiff’s §1983 action, which was evident there was no  
16 “state action” remaining before the district court after the Order (#139)  
17 dismissed Defendants State of Nevada, with prejudice, July 12, 2001, for  
18 the district court to continue to confer federal jurisdiction under 28 USC  
19 §1331 where none existed, in order to enter sanctions against them on  
20 behalf of the Plaintiff. Specifically, where the Order (#142) held Plaintiff’s  
21 complaint alleged the actions of the Duff Defendants are intertwined with  
22 the actions of the state actors. The Ninth Circuit held it was impossible for  
23 Plaintiff to prevail on the merits against the Duff Defendants without a  
24 “state action” after the district court dismissed the state actors.

25 Rather than properly dismissing the Plaintiff’s §1983 complaint  
26 against the Duff Defendants, the district court continues to confer it has  
27 jurisdiction under 28 USC §1331 where none existed without a “state  
28 action” remaining before it after the Order (#139) dismissed Defendant

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

2 State of Nevada with prejudice, July 12, 2001, in order to enter sanctions  
3 against them during the timeline it designated. The Supreme Court has held  
4 that without proper jurisdiction, a court cannot proceed at all, but can only  
5 note the jurisdictional defect and dismiss the suit. See., e.g. *Arizonans for*  
6 *Official English v. Az.*, 520 U.S. \_\_, \_\_ (1997); *Nat'l Railroad Passenger*  
7 *Corp. v. Mathews*, 427 U.S. 524,531 (1976); *Sec'y of Navy v. Avrech*, 418  
8 U.S. 676, 678 (1974)(per curiam); and *Chandler v. Judicial Council of*  
9 *Tenth Circuit*, 398 U.S. 74, 86, 88 (1970), distinguished.

10 Without a "state action" remaining before the district court after the  
11 Order (#139) dismissed Defendant State of Nevada with prejudice July 12,  
12 2001, it was clearly evident it lacked federal jurisdiction under 28 USC  
13 §1331, in Plaintiff §1983 action, to enter sanctions against the Duff  
14 Defendants for the timeline it designated between July 5, 2002 and  
15 February 14, 2004. Any authority exercised by the district court after the  
16 Order (#139) was a usurped authority and for the exercise of such authority  
17 when the want of jurisdiction was known to the judge, no excuse was  
18 permissible, rendering all the orders and judgments after the Order (#139)  
19 absolutely void in the fullest sense of the term for want of jurisdiction  
20 (*Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1871)), where the  
21 district court continues to acted as the advocate for the Plaintiff, five (5)  
22 years after he quit participate in any proceedings August 22, 2008 and for  
23 the State Defendants, eleven (11) years after they quit participating in any  
24 proceedings August 16, 2002, which indisputably prejudice the Duff  
25 Defendants.

26 The United States Supreme Court held that no sanctions or penalties  
27 shall be imposed upon one because of his exercise of constitutional rights.  
28 *Boyd v. United States*, 116 U.S. 616, 6 S.Ct. 524 (1886); *Malloy v. Hogan*,

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC  
2 378 U.S. 1, 84 S.Ct. 1489 (1964); *Spevack v. Klein*, 385 U.S. 511, 87 S.Ct.  
3 625 (1967); *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967);  
4 *Sherar v. Cullen*, 481 F.2d 945 (1973).

5 One of the fundamental purposes of Rule 11 is to “reduce frivolous  
6 claims, defenses or motions and to deter costly meritless maneuvers,”  
7 thereby avoiding delay and unnecessary expense in litigation. *Christian v.*  
8 *Mattel, Inc.*, 286 F.3d 1118, 1131 (9<sup>th</sup> Cir. 2002)(quoting *Golden Eagle*  
9 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9<sup>th</sup> Cir. 1986)).  
10 Sanctions are appropriate against the Plaintiff for his feckless approach to  
11 his §1983 action after it was terminated with the Order (#139), filed July  
12 12, 2001 and for his dilatory conduct as a vexatious litigant in reiterating  
13 and relitigating his §1983 complaint, for twelve (12) years, that ceased to  
14 exist after July 12, 2001 against the Duff Defendants, which was a  
15 malicious abuse of the legal process to satisfy his emotional and financial  
16 agendas he created.

17 Further, the Plaintiff initiated the pleading process, in bad faith, in  
18 order to satisfy his emotional and financial agendas he created, after his  
19 §1983 complaint was terminated by the district court with the Order (#139)  
20 dismissing Defendant State of Nevada, with prejudice July 12, 2001 and  
21 carried on with his multiple and duplicate pleadings against the Duff  
22 Defendants only until he quit participating in the proceedings August 22,  
23 2008, with total disregard to the laws, rules and statutes governing an action  
24 for redress under 42 USC §1983. A sanction under 28 USC §1927 requires  
25 a showing that the offending party (1) multiplied the proceedings; (2) in a  
26 vexatious manner, causing (3) an increase in the cost of proceedings.  
27 *Shields v. Shelter*, 120 F.R.D. 123, 127 (D. Colo. 199). A “vexatious”  
28 multiplication of the proceedings occurs when the party acts recklessly or

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC  
2 with bad faith. *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1107 (9<sup>th</sup> Cir.  
3 2002), which the Plaintiff has clearly demonstrated in his §1983 action.

4 The district court held that sanctioning authority lies in the court's  
5 inherent power "to manage [its] own affairs so as to achieve the orderly and  
6 expeditious disposition of cases." *Chambers v. NASCO, Inc.* 501 U.S. 32,  
7 43 (1991). If this is the case, why didn't the district court stop the Plaintiff  
8 from proceeding in his §1983 action after it was terminated with its Order  
9 (#139) dismissing Defendant State of Nevada with prejudice July 12, 2001  
10 and allow him to continue, for twelve (12) years, against Duff Defendants  
11 only with no "state action" remaining before it after it dismissed the state  
12 actors.

13 **Conclusion**

14 No sanctions/fees can be entered against the Duff Defendants for  
15 exercising their constitutional rights, in the timeline designated by the  
16 district court, in defense of the Plaintiff's dilatory conduct and feckless  
17 approach to his §1983 action as a vexatious litigant by his malicious abuse  
18 of the legal process, for over twelve (12) years, after his complaint for  
19 redress under 42 USC §1983 was terminated in the Order (#139) dismissing  
20 Defendant State of Nevada, with prejudice, that simultaneously terminated  
21 the district court's federal jurisdiction under 28 USC §1331 July 12, 2001.

22 Therefore, the Ninth Circuit must note the district court's  
23 jurisdiction defect and vacate the district court's Orders (#424, #426) and  
24 Judgment (#425) for lack of federal jurisdiction under 28 USC §1331, in the  
25 Plaintiff's §1983 action, after the Order (#139), filed July 12, 2001 and  
26 dismiss the Plaintiff's complaint for redress under 42 USC§1983, against  
27 the Duff Defendants, with prejudice and declare the Plaintiff a vexatious  
28 litigant and remand for sanctions to be entered against him for his malicious

1 9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC  
2 abuse of the legal process for over 12 years after his §1983 action was  
3 dismissed in the Order (#139) and for this Court to vacate its Judgment,  
4 filed May 1, 2006, in case no. 04-15326 and enter judgment in favor of the  
5 Duff Defendants.

6 **8. Do you have any other cases pending in this court? No**

7 **9. Have you filed any previous cases which have been decided by**  
8 **this court? If so, give the name and docket number of each case.**

9 9<sup>th</sup> Cir. No. 04-15326/D.C. Case No. 3:99-cv-0386-LRH-RAM  
Richard W. Lewis, Ph.D. v. Tyrone Duff and Linda Duff

10 9<sup>th</sup> Cir. No. 05-16812/D.C. Case No. 3:04-cv-0059-LRH-RAM  
Tyrone Duff v. State of Nevada, et.al.

11 9<sup>th</sup> Cir. No. 06-15279/D.C. Case No. 3:05-cv-0131-KJD-VPC  
12 Tyrone Duff v. State of Nevada, et.al.

13 9<sup>th</sup> Cir. No. 06-15279/D.C. Case No. 3:05-cv-0364-KJD-RAM  
Tyrone Duff v. State of Nevada, et.al.

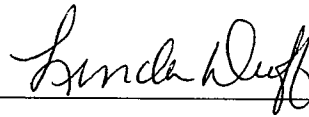
14 9<sup>th</sup> Cir. No. 08-17314/D.C. Case No. 3:99-cv-0386-LRH-RAM  
15 Richard W. Lewis, Ph.D. v. Tyrone Duff and Linda Duff

16 September 16, 2013

17 DATE

18 

Tyrone Duff

19 

Linda Duff

20 P.O. Box 2512

21 Bellingham, WA. 98227



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**CERTIFICAT OF SERVICE**

Case Name: RICHARD W. LEWIS, PhD. v. TYRONE DUFF  
LINDA DUFF

and

ELIZABETH RICHITT, PhD.; RICHARD WEIHER, PhD.,  
DAVID ANTONUCCIO, PhD., LOUIS MORTILLARO, PhD.,  
DENNIS ORTWEIN, CHRISTA PETERSON, PhD., STATE  
OF NEVADA, BOARD OF PSYCHOLOGICAL EXAMINERS

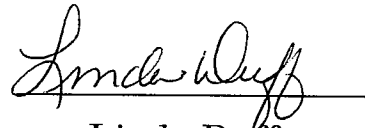
Defendants.

9<sup>th</sup> Cir Case No. 13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

We certified that copies of the Appellants' Informal Opening Brief and copies of Appellants' Excerpt of Record Volume I and IV and any attachments was served, either in person or by mail, on the persons listed below.



Tyrone Duff



Linda Duff

<u>Name</u>	<u>Address</u>	<u>Date Served</u>
Marie C. Mirch, Esq. Attorney on behalf of Richard W. Lewis, PhD.	3507 W. Charleston Blvd. Las Vegas, NV. 89102	09/16/2013
Sara Bradley, Esq. Attorney on behalf of Nevada Psychological Examiners Board	100 North Carson St. Carson City, NV. 89701	09/16/2013

9<sup>th</sup> Cir. Case No.13-16181/D.C. Case No. 3:99-cv-00386-LRH-WGC

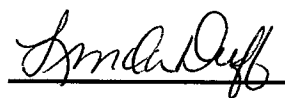
**CERTIFICATE OF COMPLIANCE**

Pursuant to the Fed.R.App.P. 32(a)(7)(C) and Circuit Rule 32-1, we certify that the attached Appellants' Informal Opening Brief is proportionately spaced, has a typeface of 14 points or more and contains 12,014 words.

DATED this 11<sup>th</sup> day of September, 2013.

A handwritten signature in black ink, appearing to read 'Tyrone Duff', written over a horizontal line.

Tyrone Duff

A handwritten signature in black ink, appearing to read 'Linda Duff', written over a horizontal line.

Linda Duff

P.O. Box 2512  
Bellingham, WA. 98227