

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-CV-01924 (DME-KMT)

KENNETH L. SMITH,

Plaintiff,

v.

HONS. MICHAEL L. BENDER,
NATHAN B. COATS,
GREGORY J. HOBBS, JR,
REBECCA LOVE KOURLIS,
ALEX J. MARTINEZ, and
NANCY E. RICE, in their individual capacities only,
MARY J. MULLARKEY, in her individual and
official capacities,
HON. JOHN W. SUTHERS, and
FRIEDRICK C. HAINES, in their personal capa-
cities only,
JOHN DOES 1-99, and
THE UNITED STATES OF AMERICA,

Defendants.

MOTION FOR RECUSAL OF JUDGE KRIEGER

Comes now plaintiff Kenneth L. Smith (“Smith”), *in propria persona*, who states as follows:

ARGUMENT

As a result of Judge Ebel’s recent recusal pursuant to his prerogative as a senior judge in this case and a local rule assigning cases brought by the same *pro se* litigant in a non-random manner, D.C.COLO.LCivR. 40.1(C), this Court is placed in a position wherein it has an inherent conflict of interest. As such, Smith respectfully requests that Judge Marsha S. Krieger recuse herself with respect to the above-captioned matter.

Distilled to essentials, the matter before you is simple on the facts. It was precipitated by justices of the Colorado Supreme Court rendering a decision in an appeal in which they were parties defendant in tort, despite the fact that sixteen non-conflicted judges were available and expressly authorized by statute to hear the case, Colo. Rev. Stat. § 13-4-101, in self-evident violation of the Fourteenth Amendment. *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). As the decision as rendered was in direct contravention of United States Supreme Court precedent, *Claflin v. Houseman*, 93 U.S. 130 (1876) (federal civil rights claims must be heard in a state court of general jurisdiction), Smith was thereby deprived of his constitutional right of access to the courts.

Under Colorado law, a judge with a conflict of interest must recuse, Colo. Rev. Stat. § 16-6-201(2), immediately “los[ing] all jurisdiction in the matter except to [transfer the case].” *People ex rel. Burke v. District Court*, 60 Colo. 1, 8, 152 P. 149 (Colo. 1915). As the justices had not one but two separate and distinct decisions to make -- and their ability to obtain jurisdiction over the second question depended solely on their ability to make the first one, which they could not do under Colorado law -- they had no colorable jurisdiction over Smith’s appeal. *See*, Resp. in Opp. to State Defs.’ Mot. To Dismiss [Dkt. # 14] at 1-2. Accordingly, they were not entitled to absolute judicial immunity, *see, Bradley v. Fisher*, 80 U.S. 335 (1871); as a result, Smith sued for compensatory damages, as well as injunctive and declaratory relief.

Smith v. Ebel, Civil Action No. 08-CV-251-MSK-KMT, was necessitated by the documented practice of courts within this District and Circuit of systematic discrimination against pro se litigants. Courts routinely issued irregular decisions, some of which were indisputable conflict with “binding” United States Supreme Court precedent directly on-point, *e.g., Smith v. Mullarkey*, 67 Fed.Appx. 535 (10th Cir. Jun. 11, 2003) (irreconcilable conflict with *District of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 482-83 (1983); *Roe v. Ogden*, 253 F.3d 1225 (10th Cir. 2001).

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2008, I served a copy of the foregoing upon all parties (including all attachments, where appropriate) herein by depositing it in the United States Mail, postage prepaid, and addressed as follows:

Marc A. Bonora
c/o United States Dept. of Justice
1225 - 17th St., Suite 700
Denver, Colorado 80202

Christine Wilkinson
c/o Colorado Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203,

the last known mailing address.

Kenneth L. Smith