

STATE OF MINNESOTA
IN COURT OF APPEALS

In re Paul Stepnes, Chester Group, LLC,
Chester House, LLC,

Petitioners.

Court of Appeals No. _____

Paul Stepnes, Chester Group, LLC,
Chester House, LLC,

Fourth Jud. Dist. No. 27-cv-10-25884

Plaintiffs,

**PETITION FOR WRIT OF
PROHIBITION AND/OR
MANDAMUS: AFFIDAVIT OF
PEGGY KATCH IN SUPPORT**

v.

All States Title, *et al*,

Defendants.

Peggy Katch, being first duly sworn deposes and states:

1. I am a Legal Assistant at Jill Clark, P.A. and staff Attorney Clark.
2. On February 20, 2011, I came into the office on a Sunday, even though it was a long holiday weekend (we were not open Monday the 21st). I noticed a letter in an envelope from Judge Blaeser's chambers (not Court Administration, see **A:65**). I alerted Ms. Clark to the contents of this envelope. I am the one who opens the mail, and I know that it could not have been delivered by the Post Office before Saturday, February 19, 2011. On February 23, 2011, Attorney Clark asked that I hand deliver to the Court, the pleading at **A:8-12d**. She asked that I request emergency processing (I have done that before with TRO's, and I know the process).

The Fourth Judicial District Court Administration was closed that afternoon, so I took a copy to Chief Judge Swenson's chambers, to ask how an emergency removal can be processed when the Court Administration is closed. I was advised by a Clerk to return in the morning. I also hand-delivered copies of the pleading to the chambers of Judge Bush and Judge Blaeser, and I put the original in the box at the civil filing counter, to be used when that counter is closed.


3. I did return the next morning (2/24), and was told by Court Administration that the pleading was being "filed" as of 2/23 (they got the original out of the box), that all of the appropriate people had their copies. I was told it was being handled by Judge Blaeser, and was up to him. I emphasized that Mr. Stepnes had been unable to obtain representation and needed to know if he needed to appear. And, they went away and I waited, and then they came back and said I could leave and I would get a call or we would get an email or fax. I was told that Judge Blaeser would decide what to do and someone would "let us know."

4. I did not know that Judge Blaeser still intended to convene a hearing that morning. I heard nothing via phone, fax, or email about the upshot of the filing of the pleading. Unbeknownst to me, the Judicial Officer did convene a hearing that morning. See order at **A:2**. And when the 2/24 Order was issued, no copy was mailed, emailed, or faxed by that Judicial Officer's chambers to our firm. After we received the letter from Chief Judge Swenson, I went downtown to look at the court file, and obtained a copy that way. No one disclosed to me at any point that Judge

Blaeser's chambers were communicating with defense attorneys on the file (I use that term generically, since in this particular case, Tom Olson apparently had some discussions on the phone, but his client was never served).

This concludes my affidavit of 3 pages.

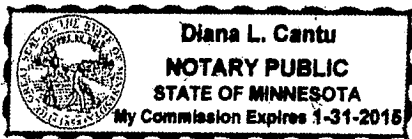
Signed and sworn before me this
17th day of March, 2011.



Notary Pulic



Peggy Katch



STATE OF MINNESOTA
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Plaintiffs,

**PETITION FOR WRIT OF
PROHIBITION AND/OR
MANDAMUS: AFFIDAVIT OF
JILL CLARK IN SUPPORT**

v.

All States Title, *et al*,

Defendants.

I, Jill Clark, Esq., being first duly sworn, depose and state:

1. This civil action was filed on **November 4, 2010** by one individual and two companies. Shortly thereafter, I served the summons and complaint upon Defendant Steven R. Little ("Little"). (Summons and Complaint at A:37-47). Mr. Little specifically stated to me that he would not (or could not) accept service on behalf of his law firm: Coleman, Hull & van Vliet, PLLP ("Coleman"). (Clark Aff. ¶2).

2. I then telephoned management at the Coleman firm, and was advised that the firm would be willing to sign an acknowledgement of service if one were faxed over. However, then some things occurred (which remain attorney-client-privileged at this time), and Plaintiffs did not serve any other defendants.

3. To this day, no other defendants have ever been served. Little was the only defendant properly before the Court.

4. Little and Coleman apparently retained the same law firm. On **November 24, 2010**, Defendant Little (who had been served), and Coleman (which had not been served), filed a motion to dismiss, citing Minn.R.Civ.P. 12.0(e). (A:19-22). The motion argued that the Complaint did not state a claim upon which relief can be granted. (A:21-22). The motion did not raise any defense of insufficiency of process, or insufficiency of service of process. (*Id.*).

5. For reasons that are unclear, Old Republic National Title Insurance Co. *also* scheduled a motion to dismiss (A:48) (but it did not file an actual motion). Old Republic had **not** been served.

6. On **February 7, 2011**, Plaintiffs amended the complaint to: a) revise the summons to fit the new form; b) add Chester House, LLC as a Plaintiff; and c) remove TFIC, LLC as a defendant. (A:51 *et seq.*). Plaintiffs had contemplated adding Green Holding, LLC as a plaintiff, but decided not to do so at that time. The Summons still contained a typographical error, "Green House, LLC" should have been "Chester House, LLC" as in the Complaint. Plaintiffs served the amended summons and complaint upon Little, and they filed it.

7. On or about **February 8, 2011**, I talked with Court Administration with purview over assignments, at the counter on the third floor of the Government Center. The Clerk inquired as to the whereabouts of the complaint with Chester

House as a Plaintiff, and Attorney Clark indicated that it might still be in processing, that it had been filed the day prior on the second floor.

8. On **February 16, 2011**, I went first to a court appearance in Ramsey County, and then met her Assistant at the Hennepin County Government Center to prepare for a hearing in a different civil case. While awaiting that hearing, I asked my assistant to go file the Notice of Dismissal, which she had brought with her. This was around 11:30 a.m.

9. None of the plaintiffs, their attorneys, or any staff had any idea that an Order signed by Judge Bush for Judge Blaeser had been filed earlier on February 16. Plaintiff counsel's office opened the mail containing the February 16 Order on Sunday, **February 20, 2011**. This was the long "President's birthday" weekend. The Office was closed Monday, **February 21, 2011**.

10. I spent significant time researching the issues raised in the Order. Plaintiff counsel estimates that from **February 20-22**, she spent approximately 15 hours researching the issues raised by the February 16 Order.

11. On **February 21, 2011**, I met with Paul Stepnes. I practice both civil and criminal law, and was concerned that, as stated, the order to show cause was a criminal contempt proceeding. Plaintiff team consulted with more than one criminal defense attorney, but could not locate one able to appear on such short notice, at the **February 24** hearing.

12. The February 16 Order did not cite any authority for the order to show cause. Plaintiff counsel's research confirmed that even inherent judicial authority has limits. This particular Judicial Officer was not assigned to the file, which further limited the authority. Based on research, it appeared that the proceeding had to be a contempt action. It did not fit the legal definition of a civil contempt action (there was no "purge" that plaintiffs could perform, no prior judicial order even alleged to have been violated). Therefore, it had to be a criminal contempt proceeding. And it could not be a direct contempt action - nothing had occurred in the presence of the Judicial Officer. The remaining option was constructive criminal contempt.

13. Plaintiff counsel's research confirmed that since 1955, the law has not allowed a judicial officer to act as investigator, jury and judge in a constructive contempt action. A constructive contempt case must be charged out by a prosecutor, and full criminal due process rights are afforded (personal service, neutral judge, trial by jury, etc.).

14. I was hesitant to allow Mr. Stepnes to personally attend the February 24 hearing *without criminal counsel present*. And criminal counsel could not be secured. I was not fully apprised of what would occur on February 24, but I was concerned that I was a witness, so separate counsel was advisable.

15. Further, Plaintiff team had numerous issues with the February 16 Order. Neither of the Judges whose names appear on the February 16 Order had ever been assigned to the case. All of the cases that limit the inherent authority of the

court *assume* that the judge is properly sitting on the case. I was simply not familiar with any authority for one judge to *sua sponte* begin ruling upon another judge's case.

16. Unbeknownst to Plaintiffs, the Judicial Officer did convene a hearing that morning. See order at A:2. No phone call was made to inform Plaintiffs how the objection to jurisdiction pleading was being dealt with. And when the 2/24 Order was issued, no copy was mailed, emailed, or faxed by that Judicial Officer's chambers. No disclosure had been made to Plaintiffs, their counsel, or the Assistant, concerning phone calls with other attorneys.


17. The February 24 Order focused in a different area. The Order showed that *additional* research had been conducted, and that the focus had changed to Chester House being an *inactive* corporation. Because this was not an issue noticed in the show cause order, Plaintiffs had not been on notice to address it in their objection to jurisdiction pleading. Petitioners read the February 24 Order to suggest that perhaps Chester House was registered with the SOS between February 16 and February 20. February 20 was a Sunday (of the long weekend). And the February 16 Order had not been opened in Plaintiffs' attorney's office until that day.

18. The February 24 Order also stated that Old Republic had not been served with Plaintiffs' dismissal without prejudice. However, Old Republic was not a party, so there was no reason to serve Old Republic.

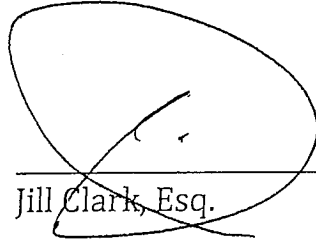
Exhibits referenced herein are found in the Appendix.

This completes my affidavit of 6 pages.

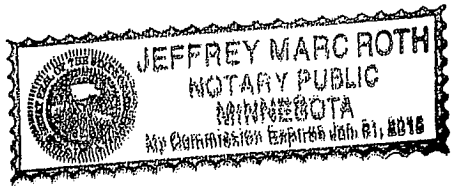
Signed and sworn before me this
13th day of March, 2011.



Notary Public



Jill Clark, Esq.



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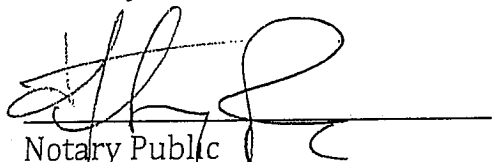
Defendants.

I, Paul Stepnes, being first duly sworn depose and state:


1. I previously signed an affidavit supporting this petition. I have reviewed the email at A:66-67. This was never disclosed in the case. I have to say, I am quite dismayed at this type of communication is going on. I have witnessed, first-hand, its prejudice on plaintiffs. I am filing this writ action because I am concerned that if/when I file another civil lawsuit – it will be before Judge Zimmerman and this Court would deem it is too late to then raise the issue of his removal. I made that decision before I signed my prior affidavit. Now that I have seen the email, I am even more convinced that we are doing the right thing, and that this needs to get addressed now. I note that Judge Zimmerman appears to have

been emboldened by the fact that this Court "denied" a prior petition for writ of prohibition. It appears that subtly has been lost on certain judges, and I am hoping that a clear message is sent by this Court in deciding this case. Otherwise, we citizens cannot feel safe filing cases in this court system.

Signed and sworn before me this
19th day of March, 2011.



Notary Public



Paul Stepnes



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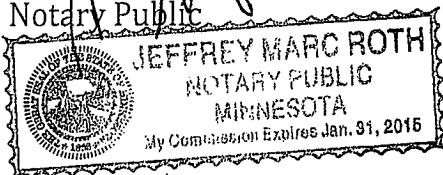
All States Title, *et al*,

Defendants.

I, Jill Clark, Esq., being first duly sworn, depose and state that I have signed an affidavit prior. Petitioners were going to file their writ on Friday, March 18, 2011 (I had arranged for criminal defense counsel, and that attorney was preparing to file the action). But on that date, I came into possession of the email at A:66-67. Petitioners decided to delay filing by one day in order to consider the email. After review, it does appear relevant, and is cited in the writ. Given the content of the email, the decision was made that I would sign the petition for writs.

Signed and sworn before me this
20th day of March, 2011.


Notary Public




Jill Clark, Esq.