

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Montgomery Blair Sibley,

Plaintiff,

vs.

Frank Paul Geraci Jr., Mary C. Loewenguth,
and Catherine O'Hagan Wolfe,

Defendants.

Case No.: 20-CV-6310 EAW

**VERIFIED COMPLAINT FOR FORFEITURE OF
ARTICLE III JUDICIAL OFFICE FOR
MISBEHAVIOR, DAMAGES FOR DENIAL OF
ACCESS TO COURT AND DECLARATORY
RELIEF**

JURY TRIAL DEMANDED

Plaintiff, Montgomery Blair Sibley (“Sibley”), pursuant to 28 U.S.C. §1746 states that the factual matters stated herein are true under penalty of perjury and sues Defendants Frank Paul Geraci Jr., Mary C. Loewenguth and Catherine O'Hagan Wolfe alleging as follows:

INTRODUCTION

By this suit, Sibley seeks:

- The forfeiture of the office of United States District Court Judge Frank Paul Geraci Jr. for his “misbehavior” in office in violation of Article III, §1 of the United States Constitution;
- Damages pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) against Defendants Frank Paul Geraci Jr., Mary C. Loewenguth and Catherine O'Hagan Wolfe for their denial to Plaintiff of access to court guaranteed by the United States Constitution; and
- A Declaratory Judgment that the Defendants’ usage of the present laws, customs, practices and policies regarding *in forma pauperis* applications violates the United States Constitution.

JURISDICTION AND VENUE

1. Jurisdiction in this Court exists pursuant to 28 U.S.C. §1331 and §1343 based upon questions of federal constitutional law. Jurisdiction also exists under the Declaratory Judgment Act, 28 U.S.C. §§2201(a) and 2202.

2. Venue in this court is proper pursuant to 28 U.S.C. §1391 as a substantial part of the events or omissions giving rise to the claims herein occurred in Steuben County, New York.

PARTIES

3. Sibley, is *sui generis* and a “natural born Citizen” of the United States as he was born in Rochester, New York, the child of two United States citizens, Harper Sibley, Jr. and Beatrice Blair Sibley and has continuously resided in the United States since his birth.

4. Defendant Frank Paul Geraci Jr. is a United States District Court Judge for the Western District of New York and is sued in both his personal and official capacities.

5. Defendant Mary C. Loewenguth is the Clerk of Court for the United States District Court for the Western District of New York and is sued in both her personal and official capacities.

6. Defendant Catherine O’Hagan Wolfe is the Clerk for United States Circuit Court for the Second Circuit and is sued in both her personal and official capacities.

PREVIOUS LAWSUITS

7. There are no previous lawsuits between the instant parties or regarding the same facts involved in this case.

GENERAL ALLEGATIONS

8. On or about **July 9, 2019**, Sibley filed with agents of Defendant Loewenguth his:

(i) Complaint against Chauncey J. Watches and (ii) Motion for Leave to proceed in *forma pauperis* which was assigned Case #:19-cv-06517-FPG. A copy of the docket sheet for Case #:19-cv-06517-FPG is attached hereto as Exhibit “A” and reflects that Defendant Geraci was assigned as the Judge to this case.

9. Additionally, on **July 9, 2019**, Sibley presented to agents of Defendant Loewenguth a properly completed Summons for signature and seal in Case #:19-cv-06517-FPG. Though repeatedly requested by Sibley, Defendant Loewenguth, by and through her agents, refused to issue the necessary summons to Sibley to allow him to serve the Defendant Chauncey J. Watches in Case #:19-cv-06517-FPG. As a result, Sibley was prevented from seeking the relief he sought in Case #:19-cv-06517-FPG as that case could not move forward until Defendant Chauncey J. Watches was served with the Summons and Complaint.

10. On **August 8, 2019**, as Defendant Geraci had failed to rule upon Sibley’s Motion for Leave to proceed in *forma pauperis* for **thirty (30) days**, Sibley filed his Motion *Procedendo Ad Justiciam* which requested that Defendant Geraci *procedendo ad justiciam* upon Sibley’s Motion to Proceed in *forma pauperis*. Defendant Geraci to date has refused to rule upon either of the two aforementioned motions filed by Sibley.

11. On **September 9, 2019**, seeking appellate relief from Defendant Geraci’s refusal to allow Case #:19-cv-06517-FPG to move forward by ruling upon his Motion for Leave to proceed in *forma pauperis*, Sibley filed with agents of Defendant Wolfe his: (i) Petition for Writs of *Procedendum Ad Justiciam* and *Mandamus* seeking Orders directing, *inter alia*, that Defendant Geraci rule one way or the other on Sibley’s Motion to Proceed in *forma pauperis* and (ii) Motion to proceed in *forma pauperis* in the Second Circuit. That case was assigned Case

No.: 19-2860. A copy of the docket for Case No.: 19-2860 is attached as Exhibit “B”.

12. After waiting for **seventy-nine (79) days**, on **September 26, 2019**, as it was apparent to Sibley that Defendant Geraci was not going to rule upon his Motion for Leave to proceed in *forma pauperis*, Sibley tendered the filing fee of \$400.00. Only then did Defendant Loewenguth, by and through her agents, issue the Summons in Case #: 19-cv-06517-FPG so that Sibley could move that case forward.

13. On **December 13, 2019**, Defendant Wolfe issued a putative Order ostensibly: “At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of December, two thousand and nineteen.” In that putative Order Defendant Wolfe, representing that she was acting “For The Court” stated: “Petitioner Montgomery Blair Sibley’s submission of a Motion to Proceed in *Forma Pauperis* does not comply with the Court’s prescribed filing requirements. Despite due notice, the defect has not been cured. IT IS HEREBY ORDERED that the said motion is stricken from the docket.” A copy of that **December 13, 2019**, putative Order is attached as Exhibit “C”.

14. On **January 18, 2020**, Defendant Wolfe, again under the same circumstances as with the **December 13, 2019**, putative Order, issued the Mandate of the Court dismissing Sibley’s Petition for Writs of *Procedendum Ad Justiciam* and *Mandamus*. A copy of that Mandate is attached as Exhibit “D”.

FIRST CLAIM
DEFENDANT GERACI
FORFEITURE OF OFFICE FOR
ABUSE, NON-USE AND/OR REFUSAL TO EXERCISE AN OFFICE

15. Sibley re-alleges paragraphs 1 through 14 and incorporates them herein by reference.

16. It was the common law of the United States that existed before the federal Constitution was ratified in June 1788 – and subsequently and expressly reserved to the People by the Ninth and Tenth Amendments in 1791 – that there were three grounds for forfeiture of a judicial office: (i) abuse of office, (ii) non-use of office, and (iii) refusal to exercise an office.

17. Article III, §1 states in pertinent part: “The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour . . .”. *Ergo*, an inferior District Court Judge may be removed from office for the antithesis of “good behavior”, i.e., “misbehavior”.

18. The Ninth Amendment states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Sibley maintains that among those rights “retained by the people” is the right in a judicial proceeding to remove judicial actors for “misbehavior”.

19. The Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” Nowhere in the Constitution is the power to remove a federal Judge for “misbehavior” expressly and/or exclusively delegated to the United States.

20. The Constitution delegates to the Legislative Branch only the right to remove “civil officers” – which necessarily includes District Court Judges – in only very limited

circumstances. Article I, §2 states: “The House of Representatives . . . shall have the sole power of impeachment.” Moreover, Article I, §3 states: “Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States . . .”. Finally, Article I, §4 states: “The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.” *Ergo*, Congress can only remove a civil officer such as a District Court Judge upon an impeachment and conviction in only three instances: (i) treason, (ii) bribery, or (iii) other high crimes and misdemeanors. *A priori*, Congress cannot remove a civil officer for “misbehavior” that does not rise to the level of: (i) treason, (ii) bribery, or (iii) other high crimes and misdemeanors as such power was never granted – and indeed was expressly prohibited – to Congress.

21. *A fortiori*, there exists a range of judicial behavior which is not: (i) treason, (ii) bribery, or (iii) other high crime and misdemeanor but that does constitute “misbehavior” sufficient to breach the “good behavior” requirement of Article III, §1 for holding judicial office.

22. Neither the federal judicial branch under Article III nor the executive branch under Article II was granted the power to remove a District Court Judge. *A priori*, that power, under the Ninth and Tenth Amendments, resides with the People and it thus is properly sought to be exercised herein by Sibley.

23. The U.S. Supreme Court has left no doubt that access to court is a fundamental right and is also guaranteed by the U.S. Constitution in five different areas: (i) The Article IV

Privileges and Immunities Clause, (ii) The First Amendment Petition Clause, (iii) The Fifth Amendment Due Process Clause, (iv) The Fourteenth Amendment Equal Protection Clause, (v) The Fourteenth Amendment Due Process Clause.

24. The refusal of Defendant Geraci to rule upon Sibley’s Motion to Proceed in *forma pauperis* for seventy-nine (79) days denied to Sibley his absolute right to access court for redress of his grievances and to seek protection of his fundamental, constitutional and statutory rights, including, without limitation, the right to petition the government. Upon information and belief, and after a reasonable opportunity for discovery, Sibley will establish that Defendant Geraci allowed paying litigants immediate access to his Court but denied impoverished litigants – such as Sibley – that same access thereby denying equal protection of the laws to Sibley.

25. The foregoing is evidence of abuse, non-use and/or refusal to exercise Defendant Geraci’s office warranting a finding of “misbehavior” in that office by Defendant Geraci.

WHEREFORE Sibley demands a judgment rendered after – and only upon a jury verdict – directing the forfeiture of Defendant Geraci’s office of United States District Court Judge.

SECOND CLAIM
DEFENDANT GERACI
DAMAGES FOR VIOLATION OF SIBLEY’S RIGHT TO ACCESS COURT

26. Sibley re-alleges paragraphs 1 through 14 and incorporates them herein by reference.

27. Defendant Geraci, a federal officer who was acting under the color of federal authority as a United States District Court Judge, violated Sibley’s United States Constitution rights by refusing to rule upon Sibley’s Motion to proceed in *forma pauperis* for **seventy-nine (79) days** thereby denying injuring Sibley’s right to access to Court.

28. Sibley lacks a statutory cause of action, or an available statutory cause of action does not provide a meaningful remedy, against Defendant Geraci.

WHEREFORE, Sibley seeks compensatory and punitive damages in excess of seventy-five thousand dollars (\$75,000) from Defendant Geraci for his aforescribed constitutional violations of Sibley's rights, costs and such other and further relief as the Court deems equitable and just.

THIRD CLAIM
DEFENDANT LOEWENGUTH
DAMAGES FOR VIOLATION OF SIBLEY'S RIGHT TO ACCESS COURT

29. Sibley re-alleges paragraphs 1 through 14 and incorporates them herein by reference.

30. The Rules Enabling Act found at 28 U.S.C. §2072 "Rules of procedure and evidence; power to prescribe" states in pertinent part: "(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals. (b) Such rules shall not abridge, enlarge or modify any substantive right."

31. Issued pursuant to The Rules Enabling Act, Federal Rules of Civil Procedure, Rule 4(b) states: "Issuance. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons – or a copy of a summons that is addressed to multiple defendants – must be issued for each defendant to be served."

32. Defendant Loewenguth, a federal officer who was acting under the color of federal authority as a United States District Court Clerk, violated Sibley's United States Constitution rights and thereby injured Sibley by refusing to issue to Sibley the Summons in Case #:19-cv-06517-FPG.

33. Sibley lacks a statutory cause of action, or an available statutory cause of action does not provide a meaningful remedy, against Defendant Loewenguth.

WHEREFORE, Sibley seeks compensatory and punitive damages in excess of seventy-five thousand dollars (\$75,000) from Defendant Loewenguth for her aforescribed constitutional violations of Sibley's rights, costs and such other and further relief as the Court deems equitable and just.

FOURTH CLAIM
DEFENDANT WOLFE
DAMAGES FOR VIOLATION OF SIBLEY'S RIGHT TO ACCESS COURT

34. Sibley re-alleges paragraphs 1 through 14 and incorporates them herein by reference.

35. Defendant Wolfe, a federal officer who was acting under the color of federal authority as a United States Circuit Court Clerk, violated Sibley's United States Constitution rights thereby injuring Sibley by dismissing Sibley's Petition for Writs of *Procedendum Ad Justiciam* and *Mandamus* in Case No.: 19-2860.

36. Sibley lacks a statutory cause of action, or an available statutory cause of action does not provide a meaningful remedy, against Defendant Wolfe.

37. Federal Rules of Appellate Procedure, Rule 47(a)(2) states: "A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose

rights because of a nonwillful failure to comply with the requirement.” Notwithstanding, Second Circuit Local Rule 24.1 “Motion for In *Pauperis* Status and Related Relief” states: “A motion for leave to appeal in *forma pauperis*, for appointment of counsel, or for a transcript at public expense must include (1) the affidavit prescribed by FRAP 24(a)(1), and (2) a statement that identifies the relevant facts and makes a showing of likely merit as to each issue the appellant intends to present on appeal. Failure to comply with any of these requirements may result in denial of the motion and dismissal of the appeal.”

38. Upon Local Rule 24.1, Defendant Wolfe dismissed Sibley’s Petition for Writs of *Procedendum Ad Justitium* and *Mandamus* claiming that Sibley had failed to submit the affidavit prescribed by FRAP 24(a)(1). That affidavit is required to file an appeal. Notably, Sibley was not filing an appeal pursuant to the Federal Rules of Appellate Procedure. Rather, Sibley was initiating an original proceeding under 28 U.S. Code § 1651, known as the All Writs Act. Accordingly, as there is no form required to proceed in *forma pauperis* under the All Writs Act, the dismissal of Sibley’s Petition for Writs of *Procedendum Ad Justitium* and *Mandamus* by Defendant Wolfe was without lawful authority and violated Sibley’s right to access court.

WHEREFORE, Sibley seeks compensatory and punitive damages in excess of seventy-five thousand dollars (\$75,000) from Defendant Wolfe for her aforescribed constitutional violations of Sibley’s rights, costs and such other and further relief as the Court deems equitable and just.

**FIFTH CLAIM
ALL DEFENDANTS
DECLARATORY RELIEF**

39. Sibley re-alleges paragraphs 1 through 14 and incorporates them herein by reference.

40. Sibley's aforementioned lawsuits were brought in good faith seeking vindication of his fundamental rights.

41. The United States Supreme Court has repeatedly made clear that "differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." Likewise, the same Court has stated: "requiring indigents to pay filing fees before a writ of habeas corpus could be considered in state court was invalid under the Equal Protection Clause."

42. The Defendants' usage of the present laws, customs, practices and policies regarding *in forma pauperis* applications violates the United States Constitution.

WHEREFORE, Sibley respectfully requests that this Court:

- A. Assume jurisdiction of this action;
- B. For Claims One through Four, Sibley demands a trial by jury. For Sibley's Fifth Claim, he request an Advisory Jury trial;
- C. Declare that the Defendants' usage of the present laws, customs, practices and policies regarding *in forma pauperis* applications violates the United States Constitution.
- D. Retain jurisdiction of this matter to enforce this Declaratory Decree if subsequently violated; and
- E. Enter such other and further relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

MONTGOMERY BLAIR SIBLEY
Plaintiff
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(607) 301-0967
montybsibley@gmail.com



By: _____
MONTGOMERY BLAIR SIBLEY