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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ASHTON R. O'DWYER, JR.,
on his own behalf and on behalf of each
his clients in the "Victims of KATRINA"
litigation, both individually
and in representative capacities

VERSUS

STANWOOD R. DUVAL, JR., ET AL.

* CIVIL ACTION NO.
* SECTION **08-4728**
* JUDGE **SECT. F MAG 1**
* MAGISTRATE

* * * * *

**VERIFIED
CLASS ACTION CIVIL RIGHTS
COMPLAINT FOR COMPENSATORY
AND EXEMPLARY DAMAGES WHICH ARISES
FROM A COMMON SERIES OF TRANSACTIONS AND
OCCURRENCES WHICH ALSO INVOLVE
CRIMINAL CONDUCT, ABUSE OF POWER,
LEGAL MALPRACTICE AND INTENTIONAL TORTS,
INCLUDING CONSTITUTIONAL TORTS**

I.

This is an action for money damages, including both compensatory and exemplary damages, treble damages, pre-judgment interest and taxable costs, and for reasonable attorney's fees and costs of investigation and litigation. Plaintiff herein is a person of the full age of majority who, at all material times, was and now is a citizen of the State of Louisiana and domiciliary of the City of New Orleans. Plaintiff was, at all times pertinent, and now is, a Member of the Louisiana State Bar, Bar No. 10166, and in

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good standing. Additionally, plaintiff was, at all times pertinent, and now is, the agent of, mandatary for, and attorney-in-fact for the individuals who are specifically identified by name, both individually and in representative capacities, on Exhibit "A" to this Complaint, which is incorporated herein by reference thereto as if copied *in extenso*.

II.

Plaintiff, both individually and in his representative capacities, as well as the individuals identified, both individually and in representative capacities, in Exhibit "A" hereto, are representative of the following persons, firms, and corporations:

- A. Ethical and professional lawyers who represent innocent "Victims of KATRINA", who have been wrongfully deprived of the constitutional guarantee of due process of law, and subjected to unproductive protracted litigation, and unnecessary costs and expenses by the conduct described *infra*, which has irreparably corrupted the integrity of the litigation bearing Civil Action No. 05-4182 and consolidated cases.
- B. Survivors of human beings who died as a result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA.
- C. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered bodily injury, physical pain and suffering, anguish, anxiety, mental suffering, fear, fright, despair, hopelessness and emotional distress as a result of government's intentional

and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA.

- D. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered loss of or damage to property, both real and personal, and/or diminution in the value of their property as a result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA.
- E. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered purely economic losses as a result of government's intentional and negligent malfeasance, misfeasance and nonfeasance prior to and after Hurricane KATRINA, including lost income, lost profits and increased living expenses.
- F. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who suffered pollution damage, including bodily injury, contamination of real or personal property, lost revenues, profits and earning capacity due to pollution, and damages for subsistence use, as well as damages for the cost of containment, clean-up and remediation and restoration, and for damage to the environment.
- G. Citizens and/or residents of the Parishes of Orleans, Jefferson and St. Bernard, State of Louisiana, who experienced the threat of loss or damage as a result of government's intentional, and negligent malfeasance, misfeasance and nonfeasance during and after Hurricane KATRINA.

III.

Made defendants herein are the following:

The Judicial Defendant:

Stanwood R. Duval, Jr., who is sued individually

The State Defendant:

Charles C. Foti, Jr., who is sued individually

The Lawyer and Law Firm Defendants:

James P. Roy , who is sued individually, and the law firm of Domengeaux, Wright, Roy & Edwards

Calvin Clifford Fayard and B. Blayne Honeycutt, who are sued individually, and the law firm of Fayard & Honeycut

Daniel E. Becnel, Jr., who is sued individually, and the law firm of Daniel E. Becnel, Jr.

Drew A. Ranier, who is sued individually, and the law firm of Ranier, Gayle & Elliot, LLC

J.J. Jerry McKernan, who is sued individually, and the McKernan Law Firm

Jonathan Beauregard Andry, who is sued individually, and the Andry Law Firm

Joseph R. Bruno, who is sued individually and the law firm of Bruno & Bruno

Walter Dumas, who is sued individually, and the law firm of Dumas and Associates

And all others who may be similarly situated, against whom plaintiff and his clients reserve all rights.

IV.

This Court has jurisdiction of the claims herein asserted pursuant to the provisions of 28 U.S.C. §1331 and 28 U.S.C. §1343. This Court has jurisdiction of the State law claims asserted herein pursuant to the provisions of 28 U.S.C. §1367.

V.

Venue for this action is proper in the United States District for the Eastern District of Louisiana pursuant to the provisions of 28 U.S.C. §1391(b), because jurisdiction is not founded under diversity of citizenship, because some defendants can be found within the territorial jurisdiction of the United States District Court for the Eastern District of Louisiana, and because virtually all of the acts and omissions giving rise to plaintiff's claims, and to his clients' claims, including particularly the conspiratorial acts and omissions, described infra, occurred within the Eastern District.

VI.

Plaintiff and his clients aver that they are entitled by our system of justice to the integrity of the "Victims of KATRINA" litigation, bearing Civil Action No. 05-4182 and consolidated cases on the docket of this Court, devoid of conflicts of interests, double-dealing and backroom political shenanigans involving unethical and unscrupulous members of the Bar, and/or misconduct by others, whether they be attorneys, parties, witnesses or members of the Judiciary and their Staffs. Regretfully, plaintiff and his clients aver that they have been deprived of these rights by the misconduct described herein, and that they have been deprived of the right to due process of law guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution.

VII.

There are only three (3) reasons why plaintiff files this action:

- 1) The integrity of the “Victims of KATRINA” litigation;
- 2) The integrity of the “Victims of KATRINA” litigation; and
- 3) The integrity of the “Victims of KATRINA” litigation.

NO JUDICIAL IMMUNITY

VIII.

Plaintiff and his clients aver that the jurisprudential concept of “judicial immunity” is not supported by Article III of the U.S. Constitution, or by any other provision of the Constitution, and that it is purely a creature of Judges, who directly benefit from the concept. Plaintiff and his clients further aver that although judicial immunity may have been ostensibly created “to benefit the public”, over time, judicial immunity has been corrupted in its application by Judges, so as to benefit only malicious and corrupt judges, who should not be permitted to escape the legal consequences of outrageous and unlawful behavior, and who should enjoy no judicial immunity whatsoever, absolute, qualified or otherwise. Accordingly, plaintiff and his clients aver that defendant Duval has no immunity whatsoever from the criminal and wrongful behavior described herein, which also constituted judicial misconduct.

IX.

Further, plaintiff and his clients aver that “judicial immunity” is an unconstitutional “repugnant-to-the-constitution” concept which, if made applicable to defeat plaintiff’s and his clients’ claims against defendant Duval in this case, would deprive plaintiff and his clients of the constitutionally guaranteed due process of law to

which they are entitled pursuant to the Fifth and Fourteenth Amendments to the U.S. Constitution just as surely as if there was no constitutional guarantee to due process at all.

X.

In the alternative, since much of the misconduct described herein involves plaintiff's and his clients' claims against the State of Louisiana, its agencies and instrumentalities, political subdivisions, and individual department heads, over which defendant Duval has repeatedly determined he had no jurisdiction, then "judicial immunity" is unavailable to defendant Duval as a defense to any of the claims herein asserted.

XI.

Further in the alternative, should defendant Duval seek to invoke or plead the defense of "judicial immunity", absolute, qualified or otherwise, then plaintiff and his clients give notice of their intent to substitute as a party defendant herein, for defendant Duval, his spouse and law clerk who was (and is) a co-conspirator as to all matters pleaded herein,¹ and who is not entitled to invoke "immunity" as a defense to the claims herein asserted. Whether defendant Duval's spouse and law clerk is ultimately named as a defendant in these proceedings is a choice to be made by defendant Duval.

THE FACTUAL ALLEGATIONS

XII.

Plaintiff and his clients aver that, although his first "Victims of KATRINA" case, Civil Action No. 05-4181, filed on September 19, 2005, which was assigned to defendant Duval, bore the "low number", one or more of the lawyer and law firm defendants named herein, and others, thereafter engaged in persistent and systematic efforts, which included

¹ Plaintiff also avers, "Plaintiff didn't put the spouse and law clerk in this position, defendant Duval did."

prohibited *ex parte* communications with one or more Federal Judges and their Staffs, to have the “first-filed, higher numbered” case, Civil Action No. 05-4182, which was assigned to Judge Porteous, become the “lead” case for all “Victims of KATRINA” litigation. These efforts included an unsuccessful effort to have Judge Porteous appoint an “Interim Plaintiffs’ Steering Committee” on an *ex parte* basis, so that some of the lawyer and law firm defendants named herein could unilaterally assume control and management of all “Victims of KATRINA” litigation. Record Document Nos. 19 and 20. These efforts also included Judge Porteous conducting a Status Conference in Civil Action No. 05-4182 on February 15, 2006, for which plaintiff was given no notice.

XIII.

Subsequently, after the lawyer and law firm defendants became aware of the fact that Judge Porteous, who at the time remained under investigation by the U.S. Department of Justice, would have to recuse himself in all cases involving the Federal Government, the lawyer and law firm defendants realized that Civil Action No. 05-4181 gave them direct access to Section “K”, over which Judge Duval presided. This access was particularly important both to defendant Fayard, who is a “close personal friend of long-standing” with defendant Duval, and to others with whom defendant Fayard had surrounded himself, including particularly, but without limitation, defendant Roy, who strongly desired to assume control and management of all “Victims of KATRINA” litigation.

XIV.

Thus began a persistent and systematic pattern of prohibited *ex parte* communications between and among defendant Duval and members of his staff, which at

the time included defendant Fayard's daughter and defendant Duval's spouse, who also is his law clerk, and the lawyer and law firm defendants named herein, including particularly, but without limitation, defendant Fayard.

XV.

The lawyer and law firm defendants named herein then proceeded to do whatever was necessary to see to it that defendant Duval appointed them to Committees and Sub-Committees in the "Victims of KATRINA" litigation, which assured them of control and management of the litigation, as well as attorney's fees to be awarded them by defendant Duval under a theory of "common benefit" at the end of the case or in the interim.

XVI.

As a result of those prohibited *ex parte* communications, defendant Duval handed control and management of the "Victims of KATRINA" litigation pending in the United States District Court for the Eastern District of Louisiana to the lawyer and law firm defendants, among others, ultimately ordering that the litigation would be organized into the following broad categories:

Levee
MRGO
Responder
Insurance
Dredging

XVII.

Plaintiff and his clients aver that membership on Committees and Sub-Committees in the "Victims of KATRINA" litigation visited on the lawyer and law firm

defendants named herein the following professional responsibilities to claimants, plaintiffs and potential class members, including plaintiff and his clients:

Honesty

Professional loyalty

Professional independent judgment

Professional fiduciary responsibilities

Adequate and competent legal representation

XVIII.

Plaintiff and his clients aver that although defendants Bruno's and Dumas' names have not appeared on any pleadings filed on behalf of the State of Louisiana IN THE "Victims of KATRINA" litigation, defendant Bruno is "Plaintiffs' Liaison Counsel" and defendant Dumas is a Committee Member. Accordingly, as a result of fee-sharing or fee-splitting agreements between and among the lawyer and law firm defendants, and others, defendants Bruno and Dumas subjected themselves to being "tainted" by the violation of the Louisiana Rules of Professional Conduct by lawyers whose fees they agreed to share.

XIX.

At some point in time, the lawyer and law firm defendants named herein including particularly, but without limitation, defendant Fayard, realized that there was money to be made by their representing the interests of the State of Louisiana, which had sustained some \$200 billion in property damages² as a result of Hurricane KATRINA.

² Plaintiff and his clients posit: "Can one ponder the attorneys' fees to be earned as a result of prosecuting an affirmative claim for \$200 billion in property damages?"

XX.

There was only one “problem” with this “money-to-be-made” idea for representing the interests of the State of Louisiana, which was motivated solely by the five-letter word, “GREED”: It was an unethical, prohibited representation due to a patently obvious conflict of interests with the interests of plaintiffs, claimants and potential class members to whom the lawyer and law firm defendants owed professional responsibilities by virtue of serving on Committees and Sub-Committees in the “Victims of KATRINA” litigation.

XXI.

Defendant Duval’s, defendant Foti’s, and the lawyer and law firm defendants’ “solution” to the obvious conflict of interests was to attempt to have defendant Duval re-organize the “Victims of KATRINA” litigation so that the State of Louisiana was no longer a party, and to “eliminate” from the litigation any lawyer or parties who deigned to aver that the State had any legal liability to anyone as a result of the levee and retaining wall failures which the public calls “Hurricane KATRINA”. Unfortunately, this included plaintiff and his clients, who “suffered” for almost two (2) years after the conspiracy described, *supra*, was implemented, and who continue to suffer to this day.

XXII.

The conspiracy to obstruct the orderly administration of justice and to deny plaintiff and his clients due process of law also was kept “secret” by defendant Duval, by defendant Foti, and by the lawyer and law firm defendants named herein, until August 29, 2007, when the representation of the State of Louisiana could not be kept secret any longer. On that date, the lawyers and law firm defendants appeared on pleadings in the

“Victims of KATRINA” litigation representing the interests of the State, which put them “on-the-record” in a direct conflict of interests position with plaintiffs, claimants and potential class members in “Victims of KATRINA” litigation by virtue of their serving on Committees and Sub-Committees in the litigation, appointed by defendant Duval.

XXIII.

This unethical and illegal representation, which commenced at an unknown time prior to August 29, 2007, but which only became public on August 29, 2007, did not come to an end until October 9, 2008, over one year after the second anniversary of Hurricane KATRINA, when the lawyers and law firm defendants named herein filed motions to substitute the Attorney General for the State of Louisiana as counsel of record for the State,³ which plaintiff and his clients aver constituted recognition by defendant Duval, by defendant Foti, and by the lawyer and law firm defendants named herein that the lawyer and law firm defendants had an irreconcilable conflict of interests by virtue of their dual representation.

THE COVER-UP

XXIV.

Plaintiff and his clients aver that there is currently underway a conspiracy to “cover-up” the aforesaid conflict of interests so as to attempt to avoid any embarrassing professional responsibility, or worse, and that defendant Duval and the lawyer and law firm defendants, among others, are co-conspirators in the cover-up. Plaintiff and his clients further aver that the cover-up has not only involved the withdrawal of the lawyers and law firm defendants from the representation of the State on October 9, 2008, but also

³ At least one of these “Special Assistant Attorneys General” still remains counsel of record for the State in Civil Action Nos. 06-8676 ad 07-5023.

to have plaintiff disbarred, which the co-conspirators erroneously believe will allow the lawyer and law firm defendants to continue representing plaintiffs, claimants and prospective class members in the "Victims of KATRINA" litigation by virtue of their serving on Committees and Sub-Committees, with defendant Duval continuing to preside over the case, and remaining in a position to give them whatever they want. With their having withdrawn from the representation of the State, and with plaintiff out of the way, the lawyer and law firm defendants believe they can tell the world, "Never mind", al la Gilda Radner.

THE CODE AND RULE VIOLATIONS

XXV.

Plaintiff and his clients aver that defendant Duval has violated the provisions of the "Code of Conduct for United States Judges" and, more particularly, the following:

CANON 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public

confidence in the judiciary and thereby does injury to the system of government under law.

Plaintiff and his clients aver that defendant Duval violated Canon 1 by demonstrating favoritism, time and time again, to his close personal friend of long-standing, defendant Fayard, and to defendant Fayard's client, the State of Louisiana, in the "Victims of KATRINA" litigation. In addition, plaintiff and his clients aver that defendant Duval violated Canon 1 as a result of his knowledge, prior to August 29, 2007, of the representation of the State of Louisiana by the lawyer and law firm defendants, and then "tailoring" his decisions to benefit the State and its lawyers. In this regard it is to be noted that Judge Duval has steadfastly refused to answer a very simple question in the "Victims of KATRINA" litigation:

"When did Your Honor or any Member of Your Honor's Staff first become aware of the representation of the State of Louisiana by Daniel Becnel and/or by Calvin Fayard concerning any KATRINA-related matters?"

CANON 2

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

- A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the judge.

COMMENTARY

Canon 2A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and

appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

Canon 2B. A judge should avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge should not use the judge's judicial position to gain advantage in litigation involving a friend or a member of the judge's family. . . . A judge should be sensitive to possible abuse of the prestige of office.

Plaintiff and his clients aver that defendant Duval violated Canon 2 by demonstrating favoritism, time and time again, to his close personal friend of long-standing, defendant Fayard, and to defendant Fayard's client, the State of Louisiana, in the "Victims of KATRINA" litigation. Additionally, plaintiff and his clients aver, upon information and belief, that defendant Duval conspired with defendant Fayard to have defendant Fayard call plaintiff by telephone on July 20, 2006, in an attempt to have plaintiff compromise his personal integrity by attempting to persuade plaintiff to agree to defendant Fayard's interceding on behalf of plaintiff's clients with defendant Duval via an *ex parte* communication, in order to have defendant Duval modify what he had already ruled in a written Order and Reasons. Plaintiff and his clients also aver that defendant Duval has conspired with others to wrongfully dismiss, on a summary basis, virtually all causes of action asserted by anyone against political subdivisions of Mr.

Fayard's client, the State, and to attempt to bind settlement with Levee Boards and their insurer for a ridiculously low figure, which settlement will benefit only the lawyers and law firm defendants named herein. Plaintiff also avers that defendant Duval has wrongfully conspired with others to have plaintiff disbarred, for "nothing".

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

A. Adjudicative Responsibilities.

- (1) A judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.
- (4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding.

B. Administrative Responsibilities.

* * *

- (3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.
- (4) A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism.

C. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
 - (a) the judge has a personal bias or prejudice concerning a party . . .

* * *

- (d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person.
- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

Canon 3A(4). The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that this provision is not violated through law clerks or other staff personnel.

Plaintiff and his clients aver that defendant Duval violated Canon 3 by demonstrating favoritism, time and time again, to his close personal friend of long-standing, defendant Fayard, and to defendant Fayard's client, the State of Louisiana in "Victims of KATRINA" litigation. In addition, defendant Duval, with knowledge that the lawyer and law firm defendants named herein routinely communicated with him or his Staff on a frequent basis, and with knowledge that they had a conflict of interests, did nothing. Further, after defendant Duval's bias, prejudice and partiality were revealed, defendant Duval failed to disqualify himself. Lastly, for a period of over one (1) month, between February 1, 2007 and March 27, 2007, after it was disclosed to defendant Duval that a person related to defendant Duval within the third degree of relationship, or the spouse of such person, had an interest that could be substantially affected by the outcome of the "Victims of KATRINA" proceedings, did "something" known only to defendant

Duval and members of his Staff, rather than to disqualify himself in the proceedings, as was required by the clear provisions of Canon 3(C)(1)(d)(iii).

XXVI.

Plaintiff and his clients aver that the lawyer and law firm defendants named herein violated Rule 1.7 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

Rule 1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

- (a) **Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:**
- (1) **the representation of one client will be directly adverse to another client; or**
 - (2) **there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.**

The lawyer and law firm defendants violated Rule 1.7 by representing the interests of the State of Louisiana on pleadings filed on behalf of the State between August 29, 2007 and October 9, 2008, while simultaneously serving on Committees and Sub-Committees in the "Victims of KATRINA" litigation, which obligated them to represent the interests of plaintiffs, claimants and potential class members, whose interests were directly adverse to the interests of the State. This rule also was violated during the period of time that the lawyer and law firm defendants secretly represented the State prior to August 29, 2007, without informing other litigants.

The lawyer and law firm defendants named herein violated Rule 3.3 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

RULE 3.3. CANDOR TOWARD THE TRIBUNAL

- (a) A lawyer shall not knowingly:**
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**
- * * *
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measure, including, if necessary, disclosure to the tribunal.**

The lawyer and law firm defendants violated Rule 3.3 by failing to disclose to plaintiff and his clients the fact that they represented the interests of the State of Louisiana until August 29, 2007, and in the meantime willfully allowing defendant Duval to dismiss plaintiff's clients' claims against the State, its agencies and instrumentalities, etc., and allowing sanctions to be imposed against plaintiff for suing the State, when they knew that they represented the interests of the State and would be asserting affirmative claims on behalf of the State in Federal Court on August 29, 2007.

The lawyer and law firm defendants named herein violated Rule 3.5 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;**
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;**

The lawyer and law firm defendants violated Rule 3.5 by engaging in, or causing others to engage in, since late 2005 or early 2006, a persistent pattern of *ex parte* communications with Judge Porteous and/or members of his Staff, and/or with defendant Duval and/or members of his Staff, which prohibited *ex parte* communications sought to influence judges and other court officials by means prohibited by law.

The lawyer and law firm defendants violated Rule 8.4 of the Louisiana Rules of Professional Conduct, which rule provides as follows:

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
- (d) Engage in conduct that is prejudicial to the administration of justice;**
- (e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;**

- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or**
- (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.**

The lawyer and law firm defendants violated Rule 8.4 by failing to reveal to the other litigants their representation of the State of Louisiana until August 29, 2007, by failing to resign their positions both as counsel of record for the State and from Committees or Sub-Committees in the “Victims of KATRINA” litigation, by causing defendant Fayard to contact plaintiff by telephone on July 20, 2007, implying that defendant Fayard could influence defendant Duval to modify his Order and Reasons of July 19, 2007, by assisting defendant Duval to do “something” other than disqualify himself from the litigation between February 1, 2007 and March 27, 2007, when the facts clearly required disqualification pursuant to 28 U.S.C. §455(b)(5)(iii), and by conspiring with defendant Duval to have disciplinary proceedings filed against plaintiff solely to obtain an advantage in this litigation.

CIVIL RIGHTS CLAIMS

XXVII.

Plaintiff and his clients aver that by virtue of their representation of the interests of the State of Louisiana prior to October 9, 2008, the lawyer and the law firm defendants named herein were acting as agents of the State of Louisiana in the capacity of “Special Assistant Attorneys General”, thus clothing their action and inaction as State action and/or inaction “under color of State law”.

XXVIII.

At all times pertinent, defendant Foti was the Attorney General of the State of Louisiana, which clothed his action and/or inaction towards plaintiff and his clients as State action.

XXIX.

The celebrated case of Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), held that a violation of a person's Fourth Amendment rights by Federal officials, acting under color of Federal law, gives rise to a Federal cause of action for damages for the unconstitutional conduct. Federal Procedure, Lawyers Edition (1989) §11:34. The Bivens Doctrine has since been expanded to include causes of action based on the Fifth Amendment. Federal Procedure, Lawyers Edition (1989) §11:39. Accordingly, plaintiff and his clients aver that "The Bivens Doctrine", therefore, gives rise to a Federal cause of action in this case pursuant to 42 U.S.C. §1983 for defendant Duval's unconstitutional conduct towards plaintiff and his clients in the "Victims of KATRINA" litigation, in which defendant Duval wrongfully deprived plaintiff and his clients of their property interests without due process of law.

XXX.

In the alternative, plaintiff and his clients aver that defendant Duval, although ostensibly clothed with the mantel of "Federal official", willfully allowed himself to be used as the "dupe" or "foil" for the State of Louisiana in the "Victims of KATRINA" litigation, and as the agent of the State as a result of his relationships with certain "Special Assistant Attorneys General", i.e., the lawyer and law firm defendants named in

this case, who were retained by then defendant Foti to represent the interests of the State in the "Victims of KATRINA" litigation. Accordingly, plaintiff and his clients aver that defendant Duval, acting under color of State law, violated plaintiff's and his clients' constitutional rights to due process of law, all as is proscribed by 42 U.S.C. §1983.

TORTS AND CONSITUTIONAL TORTS COMMITTED

XXXI.

As a result of the foregoing, plaintiff and his clients aver that the defendants and each of them are liable unto plaintiff and his clients, and to all others similarly situated, as a result of the following torts committed by defendants, including constitutional torts, against plaintiff, his clients and all others similarly situated, entitling plaintiff, his clients and all others similarly situated to damages from defendants, jointly, severally and in solido, for the following:

1. Legal malpractice;
2. Breach of the duty of loyalty;
3. Breach of fiduciary duty;
4. Abuse of process;
5. Wrongful deprivation of due process of law;
6. Prejudice to the "Victims of KATRINA" litigation;
7. Increased costs of prosecuting the litigation; and
8. Additional attorney's fees and taxable costs.

and conspiracy to commit same, all establishing causes of action against defendants under both Federal law and State law, including particularly, but without limitation, under Louisiana Civil Code Articles 2315 and 2324.

XXXII.

By virtue of defendants having committed to above-described constitutional torts against plaintiff and his clients, each and every named defendant also violated rights, privileges and immunities guaranteed to plaintiff under the 5th and 14th Amendments of the United States Constitution, all in violation of the provisions of the Klu Klux Klan Act of 1871, which are now embodied in 42 U.S.C. §1983.

XXXIII.

Defendants' actions and inactions were practiced intentionally, with actual malice and/or with reckless disregard for and/or deliberate indifference to plaintiff's and his clients' federally protected rights, as well as plaintiffs and his clients' rights under State law, and more particularly under Article 1, Sections 1, 2, 4 and 9 of the Louisiana Constitution of 1974, and were criminal, willful, wanton and reckless, so as to constitute legal misconduct, entitling plaintiff and his clients to an award of punitive or exemplary damages from defendants and each of them under the unique circumstances in his case.

XXXIV.

Plaintiffs and his clients also aver that the Court should exercise the discretion vested in it and order an award of reasonable attorney's fees as part of the taxable costs pursuant to the provisions of 42 U.S.C. §1988, since the tortious conduct complained of herein was clearly in excess of the power and jurisdiction of a Federal Judge, any agent of the State of Louisiana, the Attorney General of the State, and/or Special Assistant Attorneys General for the State of Louisiana.

**ADDITIONAL CAUSES OF ACTION
AGAINST ALL DEFENDANTS PURSUANT
TO THE FEDERAL AND STATE RICO STATUTES**

XXXV.

Plaintiff and his clients aver causes of action against each defendant pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §1961 – 1968) and pursuant to the Louisiana Racketeering Act (LSA-R.S. 15:1351 – 1356) by virtue of a pattern of racketeering activity in which each defendant participated, involving at least two (2) acts, including aiding and abetting criminal acts and conspiracy to commit same, including, *inter alia*, those involving deceit, misrepresentation and the obstruction of the orderly administration of justice, and conspiracy to commit same, all of which entitles plaintiff and his clients to treble damages and attorney's fees pursuant to the provisions of 18 U.S.C. §1964(c), and to treble damages, attorney's fees and costs of investigation and litigation pursuant to the provisions of LSA-R.S. 15:1356(e). The specific crimes committed, crimes aided and abetted, and conspiracy to commit crimes, by each of the defendants, and by all of them, include, without limitation, the following, all of which have been committed against plaintiff and his clients:

Violation of 18 U.S.C. §242

Violation of 18 U.S.C. §1503

Violation of 18 U.S.C. §1512

Violation of 18 U.S.C. §1001

Criminal conspiracy, LSA-R.S. 14:26

False statements concerning denial of constitutional rights, LSA-R.S. 14:126.2

Obstruction of justice, LSA-R.S. 14:130.1

Malfeasance in office, LS-R.S. 14:134

Plaintiff and his clients also specifically aver that the defendants and each of them constitute an “enterprise” or group of individuals associated in fact, who have willfully and knowingly engaged in a pattern of criminal conduct, interrelated by a distinguishing characteristic, i.e., do whatever may be necessary to control and manage the “Victims of KATRINA” litigation, so we can all do whatever we want (and “don’t worry”, because if we can’t “take” what we want, then Duval will “give” it to us), including ignoring a clear and concurrent conflict of interests between the interests of plaintiffs, claimants and potential class members and the interests of an adverse party, the State of Louisiana, who we also represent, but whose representation we willfully concealed from the world until August 29, 2007, and thus did not constitute isolated or unconnected events.

XXXVI.

As a direct result of the above-described tortious, unconstitutional and illegal conduct of defendants, plaintiffs and his clients aver their entitlement to monetary damages from defendants, and each of them, including both compensatory and exemplary damages, treble damages, attorney’s fees and costs of investigation and litigation.

NO IMMUNITY UNDER STATE LAW

XXXVII.

Plaintiff and his clients aver that the wrongful and illegal actions and inactions of the defendants, complained of herein, were practiced with actual malice and reckless disregard towards plaintiff and his clients, and their legal rights, and were willful, and constituted criminal, malicious, intentional, willful, outrageous, reckless and flagrant misconduct, so as to deprive the defendants of immunity pursuant to State law. Plaintiff and his clients further aver that any State law, ordinance, proclamation, regulation, statute,

etc. pursuant to which defendants, or any of them, claim they acted, is unconstitutional, and that defendants' conduct pursuant to any State law, ordinance, proclamation, regulation, statute, etc., which violated plaintiff's or his clients Federal constitutional rights, cannot be immunized by State law.

XXXVIII.

Plaintiff and his clients also aver that defendants had no discretion to violate the law and to deprive plaintiff and his clients of their constitutional rights, and that, therefore, defendants have no immunity from liability to plaintiff and his clients. Plaintiff and his clients also aver that more of the action or inaction pleaded herein can be said to have been "objectively reasonable" or that the said action or inaction did not violate clearly established constitutional rights.

**CLAIM FOR
PROSPECTIVE INJUNCTIVE RELIEF**

XXXIX.

Plaintiff and his clients also aver entitlement to and seek the following prospective injunctive relief pursuant to the provisions of Rule 65, FRCP:

- 1) Disqualification of defendant Duval from presiding over any issues in the "Victims of KATRINA" litigation, and his impeachment and prosecution for violating his oath of office.
- 2) Disqualification of the lawyer and law firm defendants named herein, and all others similarly situated, from representing anyone in the "Victims of KATRINA" litigation, and their prosecution for the criminal conduct identified herein.

XL.

Plaintiff and his clients desire and aver entitlement to trial by jury on all issues.

WHEREFORE, plaintiff and his clients pray that their class status be recognized and for judgment in their favor and against defendants, jointly, severally, and *in solido*, for the full amount of their damages, both compensatory and punitive, together with prejudgment interest, costs and attorney's fees, and for all other just and equitable relief, and also including any and all relief to which they may be entitled pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act and the Louisiana Racketeer Act, including treble damages, attorney's fees and costs of investigation and litigation.

Respectfully submitted,

**LAW OFFICES OF
ASHTON R. O'DWYER, JR.**

By: 

Ashton R. O'Dwyer, Jr.
Bar No. 10166
821 Baronne Street
New Orleans, LA 70113
Telephone: (504) 679-6166
Facsimile: (504) 581-4336

VERIFICATION

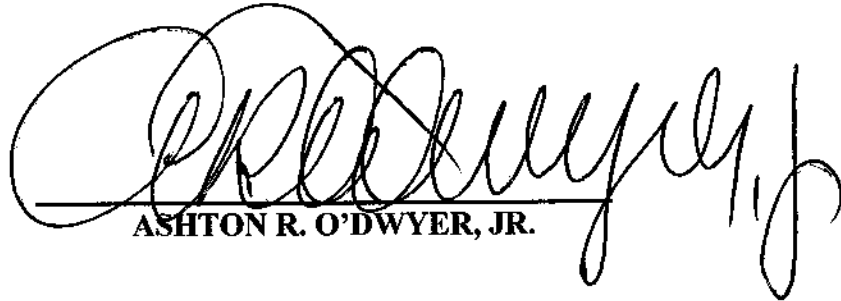
STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

ASHTON R. O'DWYER, JR.

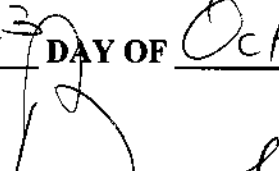
who, being first duly sworn did depose and say that all of the averments contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.



ASHTON R. O'DWYER, JR.

SWORN TO AND SUBSCRIBED BEFORE ME,

THIS 23 **DAY OF** October, 2008.



NOTARY PUBLIC